SUPREME COURT OF THE UNITED STATES.

No. 9.—ORIGINAL.

THE UNITED STATES, EX REL. THE ATTORNEY GENERAL OF THE UNITED STATES, PETITIONER,

vs.

THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA, TENTH CIRCUIT.

GOVERNMENT PRINTING OFFICE.

1 Please to take notice that on an affidavit, with a copy whereof you are herewith served, a motion will be made before the Supreme Court of the United States at the next term thereof to be held at the Capitol in the city of Washington on the first Monday of December next, at the opening of the court on that day, or as soon thereafter as counsel can be heard, that a writ of mandamus peremptory to the issue from the said Supreme Court to the circuit court of the tenth circuit of the United States in and for the northern district of California, therein and thereby commanding the said circuit court, or the judges thereof, to allow an appeal in the cause, matter, or proceeding mentioned and set forth in the foregoing affidavit, and from the judgment, decree, and final decision of the said circuit court therein to the said Supreme Court, and for such other and further order in the premises as shall be deemed fit and proper.

Yours, &c.,

JAMES SPEED, *Att'y Gen'l.*

Dated Oct. 16th, 1865.

To The Judges *of the Circuit Court, Tenth Circuit.*

2 State of California, *City and County of San Francisco, ss:*

Delos Lake, United States attorney for the northern district of California, being sworn, deposes and says: That on the second day of July, A. D. 1852, the city of San Francisco, a body corporate and politic, created and existing by and under the laws of the State of California, filed its petition before the board of commissioners to ascertain and settle private land claims in the State of California, praying for a confirmation to said city of four square leagues of land upon the peninsula on which said city is situated, and including the site of said city, which said claim was made by said city as successor of the former pueblo or town of San Francisco, under an alleged grant of said four leagues of land to said pueblo for municipal purposes by the former governments of Spain and Mexico; that thereupon and thereafter such proceedings were said by and before said board of commissioners that on the twenty-first day of December, A. D. 1854, a decree was entered by said board of commissioners confirming to said city a portion of said lands so claimed, but not the whole of the
3 same, from which decree the said city of San Francisco appealed on the twenty-ninth day of August, A. D. 1851, and the United States also appealed on the second day of June, A. D. 1856, and the transcript on said appeals was duly filed in the office of the clerk of the district court of the northern district of California, in which district all the lands so claimed are situated, on the third day of March, A. D. 1856; that afterwards, and on or about the day of , the appeal on behalf of the United States was dismissed; that on the fifth day of September, A. D. 1864, the said case was, by an order made by the said district court, and entered in its minutes, transferred to the circuit court of the United States in and for the northern district of California, and the said transcript was

thereupon filed in the office of the clerk of said circuit court on the fifth day of September, A. D. 1864. That thereupon and thereafter such further proceedings were had in and by said circuit court, that on the eighteenth day of May, in the year 1865, a decree was made and entered by said circuit court, confirming the said claim of
4 the said city of San Francisco, to said four leagues of land, with certain reservations and exceptions specified in the said decree; that after the said last-mentioned decree had been entered, the United States, by its district attorney of the northern district of California, moved the said circuit court, in open court, on or about the twenty-fifth day of May, 1865, to allow an appeal from said decree to the United States so applying therefor to the Supreme Court of the United States, which motion was, by an order entered in the minutes of said circuit court on the twenty-ninth day of May, A. D. 1865, peremptorily denied, upon the sole ground that no such appeal was allowable by law, but that the decree of the said circuit court was final in the premises.

A copy of the final decree is hereto annexed, marked "A." A copy of the order dismissing the appeal is hereto annexed, marked "B."

DELOS LAKE.

Subscribed and sworn to before me this 16th day of Oct., 1865.
GEO. C. GORHAM, *U. S. Commissioner.*

5 EXHIBIT A.

Final decree confirming the claim of the city of San Francisco to its pueblo lands, entered May 18th, 1865.

THE CITY OF SAN FRANCISCO
vs.
THE UNITED STATES.

The appeal in this case taken by the petitioner, the City of San Francisco, from the decree of the board of land commissioners to ascertain and settle private land claims in the State of California, entered on the twenty-first day of December, 1854, by which the claim of the petitioner was adjudged to be valid and confirmed to lands within certain described limits, coming on to be heard upon the transcript of proceedings and decision of said board, and the papers and evidence upon which said decision was founded, and further evidence taken in the district court of the United States for the northern district of California, pending said appeal—the said case having been transferred to this court by order of the said district court under the provision of section four of the act entitled "An act to expedite the set-
6 tlement of titles to lands in the State of California," approved July 1st, 1864—and counsel of the United States and for the petitioner having been heard, and due deliberation had, it is ordered, adjudged, and decreed that the claim of the petitioner, the City of San Francisco, to the land hereinafter described is valid, and that the same be confirmed.

The land of which confirmation is made is a tract situated within the county of San Francisco, and embracing so much of the extreme upper portion of the peninsula above ordinary high-water mark (as the same existed at the date of the conquest of the country, namely, the seventh of July, A. D. 1846,) on which the city of San Francisco is situated, as will contain an area of four square leagues, said tract being bounded on the north and east by the Bay of San Francisco; on the west, by the Pacific Ocean; and on the south, by a due east and west line drawn so as to include the area aforesaid, subject to the following deductions, namely: such parcels of land as have been heretofore reserved or dedicated to public uses by the United States, and also such parcels of land as have been by grants from lawful
7 authority vested in private proprietorship, and have been finally confirmed to parties claiming under said grants by the tribunals of the United States, or shall hereafter be finally confirmed to parties claiming thereunder by said tribunals in proceedings now pending therein for that purpose; all of which said excepted parcels of land are included within the area of four square leagues above mentioned, but are excluded from the confirmation to the city. This confirmation is in trust for the benefit of the lot-holders under grants from the pueblo, town, or city of San Francisco, or other competent authority, and as to any residue in trust for the use and benefit of the inhabitants of the city.

FIELD, *Circuit Judge.*

San Francisco, May 18th, 1865.

8 EXHIBIT B.

Order entered in the circuit court of the United States, denying the motions for appeals to the Supreme Court of the United States from the decree confirming the claim of the city of San Francisco to four leagues of pueblo lands—entered May 29th, 1865.

THE CITY OF SAN FRANCISCO
vs.
THE UNITED STATES.

And now at this day appear the parties hereto, by their respective attorneys, Delos Lake, esq., the district attorney for the United States, and John W. Dwinelle, esq., and John H. Saunders, esq., for the city of San Francisco; and thereupon the motion heretofore made by the said parties that an appeal be allowed to them to the Supreme Court of the United States from the decree rendered herein on the eighteenth instant, confirming the claim of the city of San Francisco, having been duly considered, it is ordered, adjudged, and decreed by the court that the same be denied.

FIELD, *Circuit Judge.*

May 29th, 1865.
Filed December 22, 1865.

In the Supreme Court of the United States.

DECEMBER TERM, 1865.

Ex parte the United States in the matter of THE CITY OF SAN FRANCISCO *vs.* THE UNITED STATES.	MANDAMUS.

STATEMENT AND ARGUMENT FOR THE UNITED STATES

JAMES SPEED,
Attorney General.
J. HUBLEY ASHTON,
Assistant Attorney General.

In the Supreme Court of the United States.

DECEMBER TERM, 1865.

Ex parte the United States in the matter of THE CITY OF SAN FRANCISCO *vs.* THE UNITED STATES.	MANDAMUS.

Statement and argument for the United States.

This is an application for a peremptory mandamus to the circuit court of the tenth circuit of the United States in and for the northern district of California, commanding the said court to allow the United States an appeal to this court from the final decree of the circuit court, entered on May 18, 1865, confirming to the city of San Francisco certain lands, containing an area of four square leagues, mentioned and described in the said decree of the circuit court.

The circuit court acquired jurisdiction of the claim of the city of San Francisco to the said lands by virtue of the statute of July 1, 1864, which, in its 4th section, provides as follows:

"That whenever the district judge of any one of the district courts of the United States for California is interested in any land, the claim to which, under the said act of March 3, 1851, is pending before him on appeal from the board of commissioners created by said act, the said district court shall order the case to be transferred to the circuit court of the United States for California, which court shall thereupon take jurisdiction and determine the same. *The said district court* may also order a transfer, to the said circuit court, of any other cases arising under said act pending before them affecting the title to lands within the corporate limits of any city or town; and in such cases both the district and circuit judges may sit." (13 Stat. at Large, 333.)

The city of San Francisco presented her petition to the board of land commissioners in July, 1852, claiming that she was entitled, as successor of the alleged Pueblo of San Francisco, to the proprietorship of a tract of land situated in the county of San Francisco, and embracing so much of the peninsula on which the city is located as will contain an area of four square leagues.

In December, 1854, the board of commissioners confirmed the claim of the city to a portion of the four square leagues, and rejected the claim for the residue.

An appeal was taken from the decision of the board, under the act of March 3, 1851, to the district court of the United States for the northern district of Cali-

fornia, and both parties gave notice of their intention to prosecute the appeal. Subsequently, however, the appeal was dismissed on the part of the United States, and at the date of the passage of the act of 1864, above mentioned, the case was pending in the district court on the appeal of the city alone.

After the passage of the act of 1864, and under its authority, the case was transferred to the circuit court for the northern district of California.

In that court the case was heard, and a decree entered on May 18, 1865, confirming the claim of the city of San Francisco to the four leagues of land before mentioned, with certain reservations and exceptions specified in the decree.

Thereupon, on the same day, the United States and the city, respectively, moved the court that an appeal be allowed from the said decree to this court; on behalf of the former from the whole of the decree, and on the part of the latter from so much thereof as includes in the estimate of the quantity of four square leagues confirmed to the city the parcels of land which have been reserved or dedicated to public uses by the United States. These motions the court, on May 29, 1865, overruled and denied.

The question accordingly presented on this application is whether, under the Constitution and statutes, an appeal will lie to this court from the decree of the circuit court to which reference has been made?

I.

Admitting that the doctrine relied upon by the learned circuit judge is sound in law, namely, "that the appellate jurisdiction of the Supreme Court exists only in those cases in which it is expressly granted" by statute, we contend that the act of March 3, 1851, "*to ascertain and settle private land claims in the State of California*," expressly confers upon the parties the right to an appeal from the decree of the circuit court in the present case. The statute of 1864 is silent on the point of the right of appeal to the Supreme Court from the decrees of the circuit court, in cases removed to that court from the district court, under the statute. It neither expressly provides for such appeal, nor expressly declares that such appeal shall not be allowed. Nor is there any provision of the act of 1864 by which any part of the act of 1851 is expressly repealed. The act of 1864 simply, in one class of California land cases, authorizes, and, in another class of those cases, requires the district court to *transfer* the claims to the circuit court for adjudication. That is the extent of the provision of the 4th section of that statute now under consideration. The question presented, therefore, is whether the act of 1864 repeals, by implication, so much of the act of 1851 as authorizes in cases of this character appeals to the Supreme Court. We submit with great confidence that no such effect is attributable to the statute of 1864.

(1.) When Congress enacted the law of 1851, it vested this court with appellate jurisdiction in all cases of the rejection or confirmation by the district court of any claims to lands in California based upon a right or title derived from the Spanish or Mexican government. The district court was directed by that statute to grant an appeal in every such case to the Supreme Court on the application of the party against whom it rendered judgment. This provision is equivalent to a provision that in every such case the Supreme Court may exercise appellate jurisdiction. The form of the enactment cannot change the essential legal character and effect of the legislation. The provision of the act is, that the district court "shall, on the application of the party against whom judgment is rendered, grant an appeal to the Supreme Court of the United States." This provision can have no other effect, we submit, than would have been attributable to a provision conferring simply on this court appellate jurisdiction in cases within the act. If such had been the form of the provision, the district court would have exercised, without special authority, the power of granting the appeals. The provision that the district court shall *grant* the appeals contemplated by the statutes is merely directory of the method by which the jurisdiction of this court shall be made to attach.

(2.) If the substance and intent of the 10th section of the act of 1851 are as we suggest, it is manifest that by that act the appellate jurisdiction of this court

follows the cases authorized to be transferred from the district court, after their transfer, under the act of 1864, into the circuit court; and this court may lawfully exercise in those cases, after their adjudication by the circuit court, the same jurisdiction which it could have exercised in them, had the statute of 1864 not been enacted, after their adjudication by the district court. In cases transferred into the circuit court and there determined, it is not to be presumed, of course, that Congress intended that appeals from the decrees of the circuit court should be allowed by the district court. We may concede, therefore, that by necessary implication the authority of the district court, in regard to the granting of appeals to the Supreme Court in those cases, was intended to be destroyed. In other words, while we may concede that Congress, by the act of 1864, changed the method by which the jurisdiction of this court, in cases transferred to the circuit court, should be invoked and made to attach, we contend that the act of 1864 does not affect the jurisdiction in those cases which was vested in this court by the act of 1851.

(3.) The existing legislation thus stands: We have an act, the act of March 3, 1851, conferring upon this court and vesting in it appellate jurisdiction in all cases of claims to lands in California. We have then a statute, the act of 1864, which authorizes the TRANSFER of a certain class of those cases into the circuit court. There is no express repeal of the act of 1851 contained in the act of 1864. Such a repeal

can only be worked, therefore, by implication. Implied repeals are not favored by the law. An earlier statute is not impliedly repealed by a later, unless there is a positive repugnancy between them, which will prevent the two laws standing together.—(Wood *vs.* United States, 16 Peters, 342.) Now, we ask, where does the act of 1864 impinge on the act of 1851? Manifestly the jurisdictions of both the circuit and Supreme Court in the cases transferred from the district court, can stand together in the same way that the jurisdictions of the district court and the Supreme Court would have stood together, if the act of 1864 had not been passed, or the authority it conferred had not been executed. The earlier grant of appellate jurisdiction to this court, and the later grant of original jurisdiction to the circuit court, may both take effect and operate upon the same cases.

(4.) True it is that, as we suppose the law now to stand, the circuit court is not vested *expressly* with authority to grant appeals in cases transferred to it under the act of 1864. But if the court affirm the view now presented, and hold that it possesses the same appellate powers over those cases after their adjudication by the circuit court that it would have been competent to exercise in the absence of the act of 1864, it will not permit its jurisdiction to be defeated by the omission of Congress to provide expressly for the method by which the parties shall invoke its appellate power. It will direct the circuit court to allow appeals in those cases after their adju-

dication, according to the usage and practice in such cases, on the application of the proper parties, and thus bring the records of such cases for review here.

(5.) If the right of appeal to this court in cases transferred to the circuit court, under the act of 1864, is taken away from the parties by that act, what becomes of the rule of adjudication provided in the 11th section of the act of 1851? That section provides that the commissioners, the *district* court, and this court, in deciding on the validity of any claim brought before them under the provisions of the act of 1851, shall be governed by certain laws, principles, and decisions. The act of 1864 does not declare the rule of adjudication to be observed by the *circuit court* when it obtains the control and disposition of cases provided for by the act of 1851. It might thus be argued that, inasmuch as the 11th section of the act of 1851 declares that the *district court* shall be governed by the laws and decisions mentioned therein, and inasmuch as the act of 1864 does not expressly re-enact the 11th section of the act of 1851, the *circuit court*, in determining cases under the act of 1851, is not to be governed by the Treaty of Guadalupe Hidalgo, or the law of nations, or the principles of equity, or the decisions of this court. Such an argument stands on precisely the same ground as the one which affirms that, inasmuch as the act of 1851 gives the right of appeal in cases within it exclusively from the district court, that right cannot be exercised in those cases when, under the act of 1864, they are removed into the circuit court.

II.

In the case of Durousseau *vs.* The United States, (6 Cranch, 318,) this court said: "The Constitution and the laws are to be construed together. It is to be recollected that the appellate powers of the Supreme Court are defined in the Constitution, subject to such exceptions as Congress may make. Congress has not expressly made any exceptions, but they are implied from the intent manifested by the affirmative description of its powers. It would be repugnant to every principle of sound construction to imply an exception against the intent."

We believe it to be the true intent of the legisure to place the circuit court, in regard to cases nsferred to it under the 4th section of the act of 364, precisely on the footing of the district court in very respect, and to subject its judgments in the ame manner to the revision of this court.

As has been seen, the circuit court may acquire urisdiction, under the act of 1864, of two classes of California land cases, namely, cases in which the district judge is disqualified by having an interest in the lands claimed, and cases in which the claims affect the title to lands within the corporate limits of any city or town. Both of these classes of cases stand on the same footing in respect to this question of appeal. The point would seem to deserve consideration whether Congress could have meant that the United States and the claimants should lose their right of appeal in cer-

tain cases by the mere *accident* of the district judge having an interest in the subjects of controversy, and in other cases by the other *accident* that some of the lands involved lie "within the corporate limits of any city or town." If the district judge is not disqualified to decide on account of interest, the United States may appeal; if he is thus disqualified, and it becomes necessary to provide for the adjudication of the cases by another judge, the United States lose their right of appeal. That is the effect of the decision of the learned circuit judge in regard to one class of cases mentioned in the act of 1864.

If the claim in any case be one "affecting the title to lands within the corporate limits of any city or town," and it is adjudicated, *as it still may be*, by the *district judge*, there shall be an appeal to this court, a survey, and a patent; but if the district judge elects to transfer the claim to the circuit court, then there is no appeal, no survey, and no patent. In other words, the right of the party to an adjudication of the case by this court is made wholly dependent upon the exercise by the district judge of the choice given him by the statute to decide or not to decide the case. Such is, in effect, the view of the learned circuit judge.

III.

Considerations based upon the title of the statute cannot properly be invoked into the argument, unless there is a reasonable and well-founded doubt in regard

to the meaning and intent of the legislature.—(Beard *vs.* Rowan, 9 Peters, 301.) In the view of the case now stated no such doubt can arise or is suggestible. If Congress had had in view any policy of expediting the determination of cases in the district court under the act of 1851, it would have declared expressly that all such cases should be removed to the circuit court, and there finally decided. But, as the provision stands, only such cases as the district judge is disqualified by interest to decide, and such of the class of those involving the title to lands within the corporate limits of any city or town as the district judge may elect to transfer to the circuit court, are transferable to the circuit court. All cases arising under the act of 1851, not embraced by one or other of these classes, must pursue the regular course of adjudication, and in respect to them the statute does not, and cannot, accomplish its supposed purpose.

IV.

But a right of appeal is also given to the United States in this case by the 22d section of the judiciary act of September 24, 1789.

By that section it is provided that "final judgments and decrees in civil actions and suits in equity in a circuit court, *brought there by original process*, &c., when the matter in dispute exceeds the sum or value of two thousand dollars, exclusive of costs," may be re-examined and reversed or affirmed in the Supreme Court.—(1 Brightley's Dig., pp. 257–8.)

In judgment of law, this case must be regarded as brought in the circuit court of California "by original process," viz: by act of Congress. By the act of 1851, the proceedings of the land commission, by the methods therein provided, were transferred to the district court. By the method provided in the 4th section of the act of July 1, 1864, this case was also *transferred, without previous judicial investigation,* from the district court to the circuit court. Under these acts of Congress, the judicial investigation of this case *began* in the circuit court. All that occurred in regard to it in the land commission and the district court was merely "a mode of providing for the institution of the suit" in the circuit court.

This was expressly held by this Court in the case of *The United States vs. Ritchie,* (17 Howard, p. 534,) in regard to the transfer of proceedings from the land commission to the district court, although the act of August 31, 1852, called the transfer an "appeal." The suit in the district court "is to be regarded," says the court, "AS AN ORIGINAL PROCEEDING, the removal of the transcript, papers, and evidence into it from the board of commissioners *being but a mode of providing for the institution of the suit in that court.* The transfer, it is true, is called an *appeal;* we must not, however, be misled by a *name,* but look to the *substance and intent of the proceeding.* The district court is not confined to a mere re-examination of the case as heard and decided by the board of commissioners, but hears the case, *de novo,* upon the papers

and testimony which had been used before the board, they being made evidence in the district court; and also upon such further evidence as either party may see fit to produce."

All this is true, *a fortiori*, of the transfer of the proceedings of the board of commissioners from the district court to the circuit court. It is expressly called "a transfer;" not an appeal. "We must look at the substance and intent of the proceeding." When we do so, we find this transfer, like the former, to be an "original proceeding" in the circuit court, the transfer "being but a mode of providing for the institution of the suit in that court." If the action of district court would have been an "original proceeding," instituted "by original process," so also must the action of the circuit court be regarded, when performing the same functions and acting by way of substitution for the district court.

If so, then the right of appeal from the decision of the circuit court to the Supreme Court is conferred by the judiciary act of 1789, it being admitted that the value of the land in controversy exceeds $2,000.

JAMES SPEED,
Attorney General.
J. HUBLEY ASHTON,
Assistant Attorney General.

5

Mar. 26 - Affirmed - Vice 49

SUPREME COURT OF THE UNITED STATES.

No. ~~273~~. ~~43~~. 36. ~~23~~. H. H.

" 9.

THOMAS H. NEWELL, Master, and the said THOMAS H. NEWELL & AL., Claimants of the Steamboat "H. R. W. Hill" & al., App'ts,

vs.

ALEXANDER NORTON, Libellant.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF LOUISIANA.

GIDEON, PRINTER.

SUPREME COURT OF THE UNITED STATES.

No. 273.

THOMAS H. NEWELL, Master, and the said THOMAS H. NEWELL & AL., Claimants of the Steamboat "H. R. W. Hill" & al., App'ts,

vs.

ALEXANDER NORTON, Libellant.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF LOUISIANA.

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U. S. DISTRICT COURT,
EASTERN DISTRICT OF LOUISIANA.

ALEXANDER NORTON vs. Steamboat "H. R. W. HILL" and THOMAS H. NEWELL, Master.	In Admiralty. No. 6853.

Libel.—Benjamin and Micou, Proctors.—Filed March 12th, 1853.

To the Honorable the District Court of the United States in and for the Eastern District of Louisiana, and holding jurisdiction in Admiralty.

The libel of Alexander Norton, who resides in St. Louis, Missouri, articulately propounds and avers:—

First. That on or about the 14th day of December, 1852, your libellant was sole owner of a certain steamboat named "Western World," her machinery, tackle, apparel, and furniture.

Second. That said steamboat, at the date aforesaid, was descending the river Mississippi, on a voyage from St. Louis to New Orleans, with a large and valuable cargo, consisting of flour, bacon, pork, lard, rope, whiskey, bran, alcohol, tobacco, corn, fruit, peas and beans, cider, cattle, steam engine and boiler, corn sheller, and various other merchandise, all more particularly set forth in the manifest of said voyage, which will in due time be exhibited and proved.

Third. That said steamboat, at the date aforesaid, and on her said trip, was staunch, strong, and sound, well manned and equipped, and with proper and competent officers and crew.

Fourth. That at the date aforesaid, and while so descending the river Mississippi, at about half past four o'clock in the morning, and in the vicinity of Princeton, Mississippi, the said steamboat Western World was run down and sunk by another steamboat, named the "H. R. W. Hill," then and there being and bound on a voyage from New Orleans to Nashville; that upon the approach of said boats to each other, the usual signal was given by the bell of the "Western World" to pass to the starboard, and said signal was answered by the bell of the said steamboat "Hill" opposite or contrary to the answer that should have been given; that the pilot of the "Western World" immediately caused the engines to be stopped, and then reversed, after which a second signal was given, which was also answered from the Hill opposite or contrary to that which should have been returned; that the "Western World" continued to back on both engines for some minutes, but the said "H. R. W. Hill" did not stop her engines, but continued on her course, and towards the said "Western World," until she ran into and sank the same, by

which the said boat, her machinery, tackle, furniture, &c., and all and singular the cargo thereof were wholly lost and destroyed, and many of her passengers and crew were drowned and killed.

Fifth. That at the time of said collision and before, the said Western World was in her proper place; that every precaution was taken on the part of her officers and crew to avoid the collision, and that no fault, imprudence, or negligence on the part of her said officers and crew contributed to said collision.

Sixth. That the said "H. R. W. Hill" was not, at the time aforesaid, in her proper place; that she had not skilful and proper pilots and officers, and that the said collision occurred entirely through the fault, negligence and imprudence, or want of skill, of the pilot and officers of said steamboat "H. R. W. Hill."

Seventh. That at the time of said collision, one was the captain, and one William Gerard was the pilot on duty on board the said steamer "H. R. W. Hill."

Eighth. That your libellant has, since the loss of said boat, for a valuable consideration, received the transfer of large claims for the value of a part of the cargo then and there lost and destroyed on board of said boat the "Western World," the value of the cargo so assigned and lost amounting to the sum of twenty-five thousand dollars, of which cargo so lost, as well as of the assignment, a more full and particular account will in due time be filed, exhibited, and proved.

Ninth. That said boat was at the time of her loss engaged in a profitable voyage, with a large number of passengers, viz: about forty or fifty cabin passengers and eighty or one hundred deck passengers; that she had a large and valuable freight list; that she had in her safe a large sum of money, about twenty-one hundred dollars, and was supplied with stores both for her voyage down and back to St. Louis, and that the whole of the passage money, freight, stores, and cash on hand, amounting in all to the further sum of seven thousand dollars, were also lost to your libellant by said collision, of all which a more particular account will be in due time exhibited and filed.

Tenth. That the entire loss sustained by the petitioner, including the value of the boat, her machinery, &c. (which he avers to be fully worth the sum of twenty-five thousand dollars), and of said cargo assigned to him said passage money, freight, stores, and cash amount to the full sum of fifty-seven thousand dollars.

Eleventh. That for the payment of said loss your libellant has an admiralty lien and privilege upon the said steamer, "H. R. W. Hill," her tackle, apparel, furniture and machinery, and a personal claim against her owners, her captain and her pilot then on duty; the said collision having occurred within the admiralty jurisdiction of this honorable court.

Your libellant therefore prays that admiralty process may issue, commanding the Marshal of the United States to seize and detain

the said steamboat "H. R. W. Hill," her tackle, apparel, furniture, and machinery, to answer the said demand, that citation in personam be also issued and served upon Thomas H. Newell, the captain and part owner, upon William Gerard, the pilot, and upon Amelia Hamilton, James W. Dyas, also part owners of said boat, commanding them and each of them to appear and answer this demand; that there be judgment condemning the said defendants cited in personam, *in solido* to pay to your libellant the said sum of fifty-seven thousand dollars; that your libellant be decreed to have an admiralty lien upon said boat and appurtenances for said sum, and that she be decreed to be sold in satisfaction of said demand.

And your libellant prays all such further relief, that the nature of the case may require and to justice may appertain.

(Signed) BENJAMIN & MICOU, Proctors.

Personally appeared Alex. Norton, the libellant, who being duly sworn, deposes that the allegations of the foregoing libel are true and correct. (Signed) ALEX. NORTON.

Sworn to and subscribed before me this 12th March, A. D. 1853.

(Signed) N. R. JENNINGS, Clerk.

United States District Court, Eastern District of Louisiana.

ALEXANDER NORTON
vs.
Steamboat "H. R. W. HILL." } No. 6853.

Warrant.

The President of the United States of America to the Marshal of the Eastern District of Louisiana, or to his lawful Deputy, greeting:—

You are hereby commanded forthwith to seize and into your possession take, the steamboat "H. R. W. Hill," her tackle, apparel, furniture, &c. &c., now libelled by Alex. Norton, in a cause of collision civil and maritime, for fifty-seven thousand dollars, in the District Court of the United States, for the Eastern District of Louisiana; that you do cite and admonish the owner or owners, and all or every other person or persons having, or pretending to have, any right, title, or interest in or to the same, to be and appear before a District Court of the United States, for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have, or can, why the said steamboat "H. R. W. Hill," her tackle, apparel and furniture, &c. &c., should not be condemned and sold agreeably to the prayer of the libellant; and how you have executed this warrant, that you make return according to law.

Witness the Hon. Theo. H. McCaleb, Judge of the said court, this 12th day of March, 1853, and the 77th year of the independence of the United States.

[SEAL.] (Signed) N. R. JENNINGS, Clerk.

Marshal's Return.

Rec'd, March 12th, 1853, and on the same day seized steamboat "H. R. W. Hill," her tackle, apparel, and furniture, gave notice, published monition in Commercial Bulletin, and all respects complied with the law, and the commands of this warrant.

(Signed) CHAS. LABUZAN, D'y Marshal.

United States District Court.

ALEXANDER NORTON vs. Steamer "H. R. W. HILL." } No. 6853.

Claim, filed March 15, 1853.

And now comes Thomas H. Newell, master and part owner of said steamer, and says that he, together with James W. Dyas, of New Orleans, and Amelia Hamilton, of Tennessee, are the true, sole, and bona fide owners of said steamer "H. R. W. Hill."

(Signed) THOMAS H. NEWELL.

Sworn to and subscribed before me this 15 day of March, A. D. 1853. (Signed) N. R. JENNINGS, Clerk.

U. S. District Court, Eastern District of Louisiana.

ALEXANDER NORTON, Owner of Str. "Western World," vs. Str. "H. R. W. HILL." } In Admiralty, No. 6853.

Citation to T. H. Newell.

To Thos. H. Newell, Capt'n.

You are hereby summoned to comply with the demand of the annexed libel, or file your answer thereto in writing, in the office of the clerk of the District Court of the United States for the East'n District of Louisiana in the city of New Orleans, within fourteen days from service hereof, or judgment will be given against you by default.

Witness, the Hon. Theo. H. McCaleb, Judge of the said court, at the city of New Orleans, this 12 day of March, 1853, and seventy-seventh year of the Independence of the U. States.

[SEAL.] (Signed) N. R. JENNINGS, Clk.

Marshal's Return.

Rec'd March 12th, 1853, and on the same day served copy of the within citation, libel annexed, personally on Capt. Thomas H. Newell, in New Orleans.

Returned same day. (Signed) W. S. SCOTT, U. S. M.
By EMILE MARY, Dy. M.

United States District Court, Eastern District of Louisiana.

ALEXANDER NORTON
vs.
Steamer "H. R. W. HILL." } In Admiralty, No. 6853.

Claimant's Bond for $52,500. March 15th, 1853.

Know all men by these presents, that we, Thomas H. Newell, part owner, and as agent of his co-owners, James W. Dyas, of New Orleans, and Amelia Hamilton, of Nashville, Tennessee, claimants, and bonâ fide owners of the steamboat "H. R. W. Hill," as principal, and H. R. W. Hill and Robert Dyas, of New Orleans, as sureties, are held and firmly bound unto Alexander Norton, libellant, in the sum of fifty-two thousand five hundred dollars ($52,500 00) lawful money of the United States, for the payment whereof to the said Alexander Norton, his heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Witness our respective names and seals, hereunto affixed by us at New Orleans, this 15 day of March, A. D. 1853.

Whereas an admiralty warrant was lately issued out of the Hon. the District Court of the United States for the Eastern District of Louisiana, at the suit of Alexander Norton *vs.* Steamboat "H. R. W. Hill," her tackle, apparel, and furniture, and numbered 6853 on the docket of the said court, commanding the marshal to seize and take into his possession the said stmr. "H. R. W. Hill," which has been seized accordingly, but has been released from said seizure and delivered to Thomas H. Newell, the master and part owner thereof, the said Thomas N. Newell, for himself and co-owners, having at the time and by reason of the signing, sealing, and delivery of these presents, filed a claim to the said steamboat "H. R. W. Hill," in the clerk's office of the said court, and which claim is now of record.

Now the condition of the above obligation is such, that if the said claimants and sureties abide by all the orders, interlocutory or final, of the court, and pay the said libellant the amount awarded by the final decree, rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void; but otherwise shall remain in full force and virtue.

(Signed) THOS. H. NEWELL, [L. S.]

For himself and owners for twenty-six thousand two hundred and fifty dollars.

(Signed) H. R. W. HILL, [L. S.]

For twenty-six thousand two hundred and fifty dollars.

(Signed) ROBT. DYAS, [L. S.]

Signed, sealed, and delivered in presence of

(Signed) CHS. A. LABUZAN.

United States District Court, Eastern District of Louisiana.

ALEXANDER NORTON vs. Steamer "H. R. W. HILL." } In Admiralty. No. 6853.

Exceptions.—Filed March 15, 1853.

And now comes the said claimants and except to the said libel, and say that according to the law, usages, and rules in admiralty, the same cannot be maintained, for that there is misjoinder, and that the said libel cannot be prosecuted jointly against the said vessel and against the owners in personam; and that it cannot be prosecuted against the said vessel, and against the pilot in personam.

Wherefore they pray judgment and that the said libel be dismissed.

(Signed) HUNTON & BRADFORD,
Proctors for Claimants.

U. S. District Court, Eastern District of Louisiana.

February Term, Stated Sessions, Saturday, March 19th, 1853.

At 10 o'clock A. M. the Court met. Present: Hon. Theo. H. McCaleb.

ALEXANDER NORTON, owner of Str. "Western World," vs. The Steamboat "H. R. W. HILL," her Owner, Master and Pilot. } In Admiralty. No. 6853.

Collision Cause.

The exceptions herein taken and filed by the claimants, on the 15th inst. (misjoinder of actions), came regularly up for hearing, L. Hunton and R. H. Marr, Esqs., appearing for said claimants, and Wm. C. Micou, Esq., for the libellant, defendant in the exceptions.

And, after hearing argument of counsel, the court being of opinion that the action against the owners and pilot cannot be joined with the proceeding *in rem*, and that the libellant must be put upon his election as to which remedy he will prosecute, but that the libel cannot be dismissed. And the libellant having elected to proceed *in rem* againt the steamboat "H. R. W. Hill," and in personam against Thos. H. Newell, her master.

It is ordered that the libel be dismissed, as to the owners and pilot of the "H. R. W. Hill," and sustained as against the vessel and master, and that the costs accrued on the proceedings against said owners and pilot be paid by the libellant.

United States District Court, Eastern District of Louisiana.

ALEXANDER NORTON
vs.
Steamer "H. R. W. HILL." } No. 6853.

Answer filed April 15th, 1853.

Hunton & Bradford, Proctors.

The answer of Thomas H. Newell, of Tennessee, James W. Dyas, of New Orleans, and Amelia Hamilton, of Tennessee, to the libel filed by the said Alexander Norton herein against the said steamer "H. R. W. Hill," whereof respondents are the sole owners.

And the said Thomas H. Ure, James W. Dyas, and Amelia Hamilton, answer and articulately propound as follows:—

First. That they are the sole and true owners of the said steamer "H. R. W. Hill."

Second. That they admit the said steamer "Western World" was descending the river Mississippi on a voyage from St. Louis to New Orleans as alleged in the second article in said libel.

Third. These respondents do not admit, but deny that the said steamer Western World was staunch, strong, well manned and equipped, and had proper officers and crew on board as is alleged in the third article in said libel; on the contrary aver that there were not competent and proper officers on board thereof, and they do say that the said Alexander Norton, who was the master of the said steamer at the commencement of said voyage had left, quit and abandoned the said steamer at Memphis, before the said voyage was completed, and was not on board thereof at the time of the collision complained of, and is therefore ignorant of the circumstances attending the said collision.

Fourth. That the matters and things contained in the fourth article in said libel are falsely alleged and set forth, and the truth and fact was and is as is hereinafter stated, to wit: That on the morning of the 14 day of December, in the year 1852, the said steamer, "H. R. W. Hill," being staunch, strong, and in every respect admirably equipped, and with experienced officers and crew on board, was engaged in making a voyage from the port of New Orleans to the port of Nashville, in the State of Tennessee (being what is commonly called a packet in the New Orleans and Nashville trade); the night was dark, so that it was improper and dangerous for a descending boat to attempt to navigate the river. About four o'clock in the morning, whilst it was still very dark, with a slight rain falling, the said "H. R. W. Hill" ascending the river with great care, was going round the island bar, nearly opposite the town of Princeton, State of Mississippi, running in the usual track as near to the said bar as was safe or proper, and whilst so running, the light of the steamer Western World was perceived descending on the starboard bow of the Hill; the said steamer H. R. W. Hill continued her course

close round the island bar (which is on the Arkansas side), and when opposite the high timber just below the foot of the clearing on said island 89 heard a signal from the bell of the "Western World" of one tap, indicating her wish to pass on the larboard of the Hill, that is, between the Hill and the island bar, although the said steamer "Western World" was then on the right of the Hill, and although her proper course was to continue down on the right of the Hill; upon hearing the said signal and seeing that the said "Western World," by reason of the darkness of the night or the incompetency of her officers or some other cause, was pursuing an improper and highly dangerous course in thus attempting to pass, the engines of the Hill were immediately stopped, orders were given to ship up and back her instantly after the two taps were given, and the alarm bell was sounded by giving two taps as signals to the "Western World," that the Hill was running the island bar. The signal of one bell or one tap was repeated by the Western World, and she was perceived to be approaching the "Hill" with great speed, and nearly directly across the river; the "Hill" was then backed hard; the bar was thrown a little to the starboard so as to let the "Western World" pass inside if possible, seeing that she persisted in that attempt, and also to prevent her from striking the "Hill" on the sides; and she would have struck the "Hill" about the boilers, but that was prevented by the said manœuvre and by the backing of the "Hill," and the blow was received by the "Hill" on her starboard stem with such force and violence as to bend the heavy iron stem band, and to split the stem entirely through, leaving pieces of the wood ends of the "Western World" wedged in the starboard stem of the "Hill;" immediately after the collision, to render assistance the "Hill" was brought along side the "Western World," then square across the river; a line was extended and made fast; both vessels drifted down stream for about an hour or more before a landing could be effected; after the collision the people on the "Western World" were taken on board the "Hill," the officers of the latter boat tendering their assistance to save the boat by throwing over portions of the cargo, and by other means, but these offers were rudely declined, and thereupon the officers of the "Western World" came on board the "Hill" asserting that they were fully insured and the boat was *well sunk.*

Fifth. That the "Western World" at the time of collision was not in her proper place, and due precaution was not taken by her officers to avoid a collision, but on the contrary these respondents aver that the said collision was occasioned wholly and solely by the fault, negligence, unskilfulness and recklessness of those in charge of "Western World," and they do specially aver that the said "Western World" was in fault in attempting to pass between the "Hill" and the island bar, where there was ample space and room for the said "Western World" to have passed down the left hand bar and thus to have avoided the collision.

Sixth. That the said Thomas H. Newell was at the time aforesaid the master of the said "H. R. W. Hill," and he, together with his other officers, were at their posts and on watch at the time of collision.

Seventh. That the said respondents deny the allegations in the eighth, ninth, tenth, and eleventh articles in said libel.

Wherefore, they pray that this honorable court would be pleased to pronounce against said libellants, and that they be condemned in costs, &c.

(Signed) HUNTON & BRADFORD, Proctors.
" THOMAS H. NEWELL,
" J. W. DYAS,
" AMELIA HAMILTON,
By H. & B.

Thomas H. Newell, being sworn, states, that the facts stated in the foregoing answer are true.

(Signed) T. H. NEWELL.

Sworn to and subscribed before me, this 5th of April, 1853.

(Signed) N. R. JENNINGS, Clerk.

U. S. District Court, Eastern District of Louisiana.

February Term, 1854. Stated Sessions, Thursday, March 2d, 1854. Court met at 10 A. M. Present, Hon. Theo. H. McCaleb.

ALEXANDER NORTON,
Owner of Steamer "Western World,"
vs.
Steamer "H. R. W. HILL" and Master. } In Admiralty.

Continuance.—This case, fixed for to-day, being called up for hearing, and neither party being present, it is ordered by the court that it be continued indefinitely.

November Term, 1855. Stated Sessions, Thursday, December 6th, 1855. Present, Hon. Theo. H. McCaleb. Court met at 10 A. M.

ALEXANDER NORTON
vs.
Str. "H. R. W. HILL."

At request of libellant's proctors, absent, L. Hunton, Esq., for claimants assenting, case continued until, and re-assigned until, Thursday, 13th inst.

U. S. District Court, Eastern District of Louisiana.

November Term. Stated Sessions, Thursday, December 13th, 1855. Court met at 10 A. M. Present, Hon. Theo. H. McCaleb.

ALEXANDER NORTON,
Owner of Steamer "Western World,"
vs.
Steamer "H. R. W. HILL" and Master.
} In Admiralty.

United States District Court, Eastern District of Louisiana.

Continuance.—On motion of P. E. Bonford, Esq., suggesting the indisposition of his associate in this cause, John Finney, Esq., and the claimant's proctors not appearing in opposition, it is ordered by the court, that this case be continued until further notice.

United States District Court, Eastern District of Louisiana.

November Term, 1855–6. Stated Sessions, Wednesday, January 2d, 1856. The Court met at 10 A. M. Present, Hon. Theo. H. McCaleb.

ALEXANDER NORTON
vs.
Str. "H. R. W. HILL" and Master.
} In Admiralty.

Hearing and note of evidence.

This cause came regularly up for hearing.

Messrs. P. E. Bonford and Jno. Finney appearing for libellant, and Messrs. R. H. Marr and L. Hunton for claimants and respondents.

The pleadings, libel, and answer having been read, a map of Princeton Bar, marked A. B., made by W. J. Thompson, engr. and surv., in February, 1854, was exhibited to the court, with the admission that the same is a correct topographical representation of that portion of the river in February, 1854, the river then being lower than at the time of the collision.

The libellant then offered and read in evidence, the following depositions on file :—

1st, of Winslow Fletcher, pilot on the "Western World" (excepted to by the respondents); 2d, of Daniel Bloys, pilot on "W. W.;" 3d, of Andrew Fleming, pilot of "Illinois;" 4th, of Ed. Morgan, 1st engr. of "W. W.;" 5th, of Wm. H. Fulton, captain of "W. W.;" 6th, of Peter Bougher, mate of "W. W.;" 7th, of George Wideman, watchman; 8th, of J. P. Symonds, barkeeper; 9th, of George W. Sparhawk, steamboat inspector; 10th, of N. J. Eaton, S. B. inspector, agent of underwriters; 11th, of Saml. Mackall, asst. engineer; 12th, of Jno. Henry, carpenter; 13th, of Chas. C. Clute, pass. on "W. W.;" 14th, of Henry Evans, flat boatman; 15th, of M. A. Mathis, wrecker; 16th, of Richard Phillips, pilot; and 17th, of David Hiner, C. W. Stuart, and Robt. J. Nelson, pilots.

The claimants and respondents offered and read in evidence the depositions, 1st, of W. H. Gerard, pilot; 2d, of Resin Bell, pilot, when the further hearing of the cause was continued until 4th inst., 10 A. M.

U. S. District Court, Eastern District of Louisiana.

Stated Sessions, 1855–6. November Term, Friday, January 4th, 1856. The Court met at 10 A. M. Present, Hon Theo. H. McCaleb.

ALEXANDER NORTON
vs.
Steamer "H. R. W. HILL" and Master. } In Admiralty.

Hearing and Note of Evidence.

The hearing of this cause having been resumed, all the proctors present, the claimants and respondents further offered and read in evidence the depositions, 3d, of Ichabod T. Hill, watchman of the str. "H. R. W. Hill;" 4th, of J. M. Smith, clerk; 5th, of W. H. McNairy, passenger; 6th, of Joseph Edwards, passenger; 7th, of Robert Graham, engineer; 8th, of George U. Farnsworth, steersman; 9th, of Chas. H. Hatcher, passenger; 10th, of S. S. Bush, passenger; 11th, of Aug. R. Whistler, 2d engr.; 12th, of Moses Irwin, mate; 13th, of James Angell, wrecker; 14th, of Wm. H. Latham, examiner of wreck; and 15th, the testimony taken in open court of R. L. Robertson, P. A. Shaw, with document "A," survey of str. "H. R. W. Hill," January 3d, 1853, of Geo. G. Campbell, Peter Marcey, Amos Applegate, Richard Nixon, Frederick Mitchell, Augustus Whistler, and L. A. Drouillard, on certain pieces of timber (of the bow of the "Western World") exhibited in court. The testimony having been closed, the further hearing of the cause was continued until 5th inst., 10 A. M.

Saturday, January 5th, 1856.
The Court met at 10 A. M. Present: Hon. Theo. H. McCaleb.

ALEXANDER NORTON, Owner of Steamer "Western World,"
vs.
Steamer "H. R. W. HILL," and Master.

Hearing of Argument.

The hearing of this cause having been resumed, the argument was opened by John Finney, Esq., for the libellant, and continued, on behalf of the claimants and respondent, by R. H. Marr and Albert Pike, Esqrs., when the further hearing was continued until Monday, 7th inst, 10 A. M.

Monday, January 7th, 1856.
The Court met at 10 A. M. Present: Hon. Theo. H. McCaleb.

ALEXANDER NORTON,
Owner of Steamer "Western World,"
vs.
Steamer "H. R. W. HILL," and Master. } In Admiralty.

Close of Argument and Submission.

The hearing of this cause having been resumed, all the proctors present, the argument on behalf of the libellant was concluded by P. E. Bonford, Esq., when the court took the case under advisement.

(Map of Princeton Bar, marked "A B." See original, page 29.)

U. S. District Court, Eastern District of La.

ALEXANDER NORTON, owner of Steamer "Western World," vs. Steamer "H. R. W. HILL." } No. 6583.

Evidence for Libellant.

Deposition of Winslow Fletcher, pilot at wheel, taken by consent of parties.

In handwriting of J. P. Benjamin and R. H. Marr, Esqs., April 13th, 1854.

Offered in evidence and read for libellant.

Respondents excepting.

January 2d, 1856.

Deposition of Winslow Fletcher, pilot at wheel.

Testimony for libellant taken by consent.

Winslow Fletcher, being duly sworn, deposes he is about forty-four years old; is a pilot by profession, and commenced piloting in the spring of 1832; was the pilot of the "Western World," and at the wheel on watch at the time of the collision with the "H. R. W. Hill;" the collision occurred at about half past four in the morning of the 14th December, 1852; it was a hazy morning, not yet daylight; being shown a plan of the river, marked "A B," signed by J. P. Benjamin and L. Hunton, to identify it, says that it is an accurate representation of the river about the place where the collision took place, but that there has been a change in the Princeton Bar since the collision took place; at that time the water ran close up to the willows, and even at low water the channel ran within about 150 yards or less of the edge of the willows, and a boat could land at the bar at any part of it nearly from the head to the foot; it was what boatmen call a cut bar or bluff bar; since that period the bar has made out into the river as shown on said map, but still during the low water it cuts and becomes bluff, at least it did so last summer; the "Western World" was just above the place marked G. W. Johnson on the map when the witness first saw the "H. R. W. Hill;" the "Western World," was then near the Arkansas shore; the Illinois, another steamer bound up, was nearly opposite Mr. Johnson's; witness saw the "Hill" just before he passed the Illinois; the witness gave a signal of two bells to the Illinois, which she answered, keeping the Arkansas shore, and the "Western World" passed outside of her; after passing the Illinois, he observed the Hill, and she was standing up the river just at the foot of the Princeton Bar, on the Mississippi side of the river; after passing the Illinois, he stood along the channel, which there makes across the river towards the

Princeton Bar, and strikes about the head of that bar; he watched the Hill, and she seemed to him to be running straight up the bar, which induced him to suppose that she was about to make a landing at Princeton, or some place on the Mississippi shore; witness then observed to his associate pilot, Mr. Bloys, who was standing near him, "that boat is coming up the river, I will give her a choice of sides;" witness gave the first signal by tapping his bell once; she crossed the signal by tapping twice; witness instantly stopped his engines and reversed them, and repeated his signal by tapping the bell once; the signal was again crossed by the "Hill," which tapped twice, and at the time the "Hill" run into the "Western World" the latter was backing, and was straight in the channel; he does not know whether the Hill's engines were stopped or not, but his opinion is that the larboard engine of the "Hill" was stopped and was backing, and her starboard engine still going ahead when the boats struck; he is not positive of this, but judged so from the way in which the Hill moved; the "Western World had no headway on her at all, no more than the current of the river could give, at the time of the collision; on the same day witness was in the pilot-house of the "Hill," and Mr. Gerard, the pilot of the "Hill," said to him that he was backing his starboard engine to get his head round to the "Western World" when the collision occurred; witness answered that he was at the wheel of the "Western World" when the boats met, and the conversation then dropped. It was commenced by Mr. Gerard, who stopped when witness told him that he was the pilot that stood at the wheel of the "Western World" when the collision occurred. The night was dark, but not too much so to run in that part of the river. It was drizzling sometimes, and sometimes not. The "Western World" had the usual signal lights, and the mate, Mr. Bougher, was at his post on the hurricane-deck, as was also the watchman. These two, with the other pilot, were the only officers then on the hurricane-deck; perhaps the carpenter was there also. Witness had come on watch a few miles above, and Mr. Blois had not yet gone below. The collision occurred, as near as he can judge, at about 150 yards distance from the cut-bar, and about one-third of the way down from the head of the willows. He cannot mark the spot on the map because the bar has made out, or fed out, as it is termed, so that it is entirely different in appearance from what it was when the accident occurred. This is the first accident that has happened to witness during the twenty years he has been a pilot, and if Mr. Gerard had kept the "Hill" straight the boats would never have touched. The "Western World" was struck on the larboard side near the forward chock, about eight feet from the stern, as near as he could judge from the pilot-house. Witness remained at his post in the pilot-house after the collision until the "Western World" careened. It is difficult to judge of the lapse of time on such occasions, but witness don't think it was over five minutes before this happened, and he got out of the pilot-house with some difficulty; and

witness got down one of the stanchions of the "Western World" to her boiler-deck, and thence to her lower deck in the same manner; and thence got on to the "Hill" by a plank which was shoved out from the Hill. The "Hill" struck the "World" stem on, perhaps a little more of the starboard side of the stem striking the "World," than the other side. Witness heard no offer on the "Hill" to save the "World" by throwing the cargo of the latter overboard; indeed, witness had just reached the "Hill" when the World turned over in the river bottom up. There was a number of passengers on the "World," and a loss of life which it is impossible for him to estimate. The papers published a loss of twenty-five or thirty, but the impression of witness is that the number lost was greater. I think it is about a mile from where they passed the Illinois, opposite Johnson's, to where the collision took place. William H. Fulton was the captain of the "Western World" when the accident occurred; he is an experienced commander, as competent to command a boat as any one known to witness, and has been steamboating on the river as captain and clerk of boats for many years. He came on board at St. Louis; Captain Norton was also on the boat when they left St. Louis, but Captain Norton stopped at Memphis and gave command of the boat to Captain Fulton. The "Western World" had a full crew; was in good order and condition; was one of the best steering boats he ever was on; and witness knows of no deficiency in any of her appointments or equipments. Capt. Fulton was on watch until one o'clock that night on the hurricane-deck, and at that hour he was relieved by the mate who came on watch, and was there when the accident happened. After the accident occurred witness heard the voice of Captain Fulton giving orders, but does not remember whether he came up on the hurricane-deck.

Cross-examined.

Just before the collision it had been raining, but I think it ceased about the time we passed the Illinois. It might still have been drizzling when the collision took place. Both shores showed very plain at the time of the collision. There was no difficulty in navigating that night. The navigation at this part of the river is not difficult, it is a good part of the river. We passed about one hundred yards on the outside of the "Illinois." The "Illinois" was from fifty to one hundred yards from the Arkansas shore. When I first saw the lights of the "Hill" she was about the foot of the bar, had just begun to turn up, and about a mile and three-quarters off. She seemed to me to be close up to the bar. I think he was steering by the cut-bar. I should judge that the bar was from three-quarters to a mile long at the stage of water when the collision occurred; but it is very difficult to judge of the length of a bar, because it varies with every rise of the water.

The "Hill" had probably run about half the length of the bar when the collision occurred.

We were about a quarter of a mile off when I gave the first signal.

We were about one hundred and fifty yards from the cut bar, and about two hundred yards above the head of the willows. We were heading straight down stream, and I was running for a gap in the timber on the main shore below; on the Mississippi sideboats running up stream, generally run around the Arkansas bar at that stage of water, about a quarter of a mile from the bar. At the foot of this bar, the water is deep enough for a boat to ran close in; just round the foot of the bar are some spurs which make it necessary for boats to stand out; but at that stage of the water they could run over them. Boats usually stand out from the bar, and make straight for the point at Johnson's on the Arkansas shore. The proper course at that stage of water for a down-stream boat, after passing the point at Johnson's, is to make over quartering for the Princeton bar. The course would be about across the foot of the lower lump, as shown on the plan; but the lump was not there at that time. It has been formed since.

After getting over within one hundred and fifty yards of the bar, I straightened up with the bar. The point at Johnson has altered some since the collision. I cannot say whether the Princeton bar has become larger or shorter since the collision; but it has widened out towards the Arkansas shore. The shape of the bar as shown on the plan is nothing like it was at the time of the collision; the willows are about the same; don't think any of them have washed away; the hill was very near the cut bar on the Mississippi side when I first rang the signal-bell; can't say how far she was from the Arkansas shore. The river is very wide, at least a mile wide at the place at which the collision occurred. I think the "Hill" was in the channel of the river when the collision took place.

I think she was about one hundred and fifty yards from the Princeton bar; the collision took place about one-third the way down the willows; it might have been more; I cannot tell how far the willows extend up and down the river; a man whose eyesight was good could have seen the Arkansas shore from the deck of the "Hill" at the time the collision occurred; I could see it; I can't tell exactly the distance, but suppose it is about a mile from the point at Johnson's to the place at which the collision occurred; it might not have been so far; it might have been further.

I do not think there is much difference between the stage of water when the plan was taken and when the collision occurred.

The "Hill" was between us and the Princeton bar when the collision occurred; she came out from the bar quartering towards us. It is not possible for me to be mistaken as to the position of the boats at the time of the collision; I never was mistaken as to position when I could see. After the collision, the "Hill" backed out from us, and came round our bows; passed a line out, and took the passengers off; when she passed around our bows, she got between

us and the Arkansas shore. Our starboard guard caught under the "Hill's" starboard guard; the "Hill" did not get her length, not half of it from us, after the collision; she nearly cleared herself so she could come round our bow.

Being asked why the "Hill," after clearing herself from the "Western World," did not come up to the "World" on the larboard, the side on which she struck—and how it happened that the "Hill" passed around the bows of the "Western World," and came up on the starboard to pass a line to the "World"—he answers: The pilot on watch may have acted of his own accord, or he may have been directed by the captain or mate on watch, or the bows of the "Hill" might have caught the current, and swung off from us.

After the collision, there was a line made fast between the boats; I heard them hallooing to pass a line, and I suppose they done so. The "Hill" knocked the "World" round so that, immediately after the collision, she lay square across the river, as near as I can judge. I can't tell what effect the blow had on the position of the "Hill." As quick as possible after the collision, the "Hill" came alongside the "World;" the head of the "Hill" was towards the Mississippi shore when she got alongside of us—our bow laying one way, and the "Hill's" bow laying the other way. The position of the "Hill" was exactly reversed after the collision when she came alongside. I think we floated together about 15 minutes; the "Hill" landed below the foot of the bar, about half a mile below the foot of the bar, perhaps not so far, perhaps three-quarters of a mile, perhaps more, below the place at which the collision occurred. It was near the breaking of day when the "Hill" made this landing; she did not go to the "World" any more after that; I consider that, at the stage of water when the collision occurred, it is as safe to run down as up; in low water, it is not safe to run down with a heavy-loaded boat when it would be perfectly safe to run up; the "World" had a pretty fair load at that time, was drawing about 8½ to 9 feet; have seen her more heavily laden; I have never seen the lower lump in the plan, having passed it always at night this season, except once, when the river was low. I cannot state the time when the collision occurred; it must have been between four and five in the morning; we changed our 4 o'clock watch some four or five miles above.

In chief resumed:

Never saw an officer of the "World" play cards on her in his life; witness sometimes plays cards himself, but never has done so on the "World;" he never saw a drunken officer on board of the "World;" he remembers seeing a flat-boat light that night near the place of the collision, or it may have been a raft; the "Western World" was not too deep to be steered with ease; she never handled better, and she was one of the best steering boats he ever was on; witness never said anything about her being insured when he went on the "Hill," for he did not know whether there was a dollar insured on her or not; witness is called "Sam" sometimes, but his

name is "Winslow Fletcher;" the name of "Sam" was a nickname given to him at Vicksburg in early life, and he has since been called so.

(Signed) WINSLOW FLETCHER.

Sworn to and subscribed before me, this 13 day of April, 1854.

(Signed) C. V. JONTE,
Justice of the Peace.

The above testimony taken by consent to be read in evidence—all objections of form waived—all other objections reserved.

(Signed) R. H. MARR,
For Claimants.

U. S. District Court, Eastern District of Louisiana:

ALEXANDER NORTON, owner of Steamer "Western World," vs. Steamer "H. R. W. HILL," &c. } In Admiralty. No. 6853.

Deposition of Daniel D. Bloys, pilot of "Western World," for libellants, taken by consent of parties, at New Orleans, on the 11th day of May, 1854, in handwriting of J. P. Benjamin and R. H. Marr, Esqs.

Read and offered in evidence for libellants, and filed 2d January, 1856.

Testimony of Witnesses for Libellant, taken by consent.

Daniel D. Bloys, being duly sworn, deposes that he is about twenty-three years of age, and is a pilot by profession; has been standing watch and drawing wages as a pilot since 1849; was one of the pilots of the "Western World" on her trip from St. Louis, bound for New Orleans, in the month of Decb'r, 1852; was on watch on the night of the collision between the "Hill" and the "Western World," on the 14th of December, 1852; was on watch until four o'clock in the morning, when Mr. Fletcher came on watch; had not left the pilot-house when the collison occurred; has examined the map of the river marked "A B," and recognizes it as being a true and accurate representation of that part of the river at the present time; there has been a change in the Princeton Bar since the collision occurred, and the small sand bars marked on the map did not exist at the time of the collison; they have been formed since; the river was lower at the time this map was made than when the collision occurred; he judges this, not because he knows when the map was made, but by the appearance of the bars as represented on the map.

The difference in the Princeton bar is that it has made out considerably at the head and foot, and also on the river side, since the collision; when the collision occurred, the bar was what is called a

"cut bar," and boats could run close along it, and the channel run close to the bar; boats then generally ran down at a distance of 100 to 150 yards of the bar, and could run closer, and even land at the bar. The "Western World" was running down on the Arkansas side of the river, just above Johnson's, when witness first saw the lights of the "Harry Hill;" she was then just about the foot of Princeton bar, just turning up the bar; the Illinois at the same time was just about Johnson's, on the Arkansas side, coming up; the "Illinois" was about one hundred yards from the "Arkansas" shore, as near as he can judge. In passing the "Illinois," the "Western World" gave the first signal; it was two bells; it was answered in the same way, and the "Western World" kept down, leaving the "Illinois" to her right; passed the "Illinois," as he thinks, a little above Johnson's house; the "Western World" then stood towards the Princeton bar, following the channel which leaves Johnson's and slopes over to the Princeton bar, striking that bar just below the head of the willows; the channel is there wide and deep, and boats are not very particular about the precise point of the bar towards which they head in crossing; whilst continuing their course down the channel, the "Hill" was coming up along the Princeton bar; this was not the usual side of the river for ascending boats, which generally take the Arkansas side; does not know what could have been the motive of the "Hill" for keeping up that bar; the "World" continued until within hailing distance of the Hill, say a quarter of a mile, or four or five hundred yards, when the "World" gave the signal by tapping her bell once; it was answered by the "Hill's" tapping her bell twice; Mr. Fletcher, who was at the wheel of the "World," instantly stopped the engine, and tapped the bell once, and reversed his engine, commencing to back the boat; this second signal was again crossed by the "Hill," which tapped her bell twice, the "World" still backing her engines; does not think that there was any more headway on the "World" than the current gave her when the boats came together, but there was considerable headway on the "Hill;" the Hill was quartering up across the river from the Princeton bar towards the Arkansas shore when she struck the "Western World;" her stem struck the larboard side of the "Western World," as near as he can judge, about eight or ten feet behind her cut-water; this is as near as he can tell from where he stood, near the larboard chimney, on the hurricane deck. Witness, when he saw the boats were coming together, left the pilot-house, and went towards the larboard side of the hurricane deck, in order to see where the "World" would be struck, but the collision occurred by the time he reached the larboard chimney; as near as he could tell, he should say that the collision occurred at the distanee of about 150 yards from the bar, and about one-third the way down the willows; as soon as the collision took place, the "Hill" backed out of the "World," and then came up again round her starboard bow, and a line was passed from one boat to the other; a very few minutes

after the shock, not more than five minutes, the "Western World" turned over on her side, and in not more than ten minutes more, she was bottom up. Witness seeing, at the time of the shock, that the whole bow of the "Western World" was knocked off, went down the steps from the hurricane roof to awaken the passengers and officers; it was between four and five in the morning, say about half past four o'clock. By the time he could get forward again from the ladies' cabin, the boat was careening on her side, and he got down to the boiler deck, then on to the guards, and got on a plank, on which he crossed to the "Hill;" the boat was then on her side, and the plank was run from the deck of the "Hill" to the edge of the guard of the "World" that was above water. There was quite a loss of life on the "Western World;" the papers reported 25 or 30, but he thinks more were lost. Just before the collision, he saw a light ahead in the river, whether on a flat boat or raft he can't say.

When the boat left St. Louis, Capt. Norton and Capt. Fulton were both on the "Western World;" Capt. Norton was in command, but having business at Memphis, gave up the command to Capt. Fulton. Capt. Fulton is as good and competent an officer as witness knows; he stood his watch regularly, and was on watch when witness came on watch that night at 11 o'clock; Capt. Fulton remained on watch till one o'clock, when the mate relieved him; at the time of the collision, besides witness and Fletcher, the mate and watchman were on the hurricane deck; the night was hazy, a little dark at times, and then again it would clear away; at the time of the collision it was not as dark as it had been on the watch of witness; the river at that place is a good part to navigate at that stage of water, much better than the part of the river that they had run during the watch of witness; witness had no difficulty in seeing during his watch so as to steer the boat, nor did he stop the engine once during his whole watch; could see the two banks of the river when the collision occurred; knew exactly where the "World" was, and which way she was heading, and could see distinctly how the "Hill" was running; could see the bar from the reflection of the fire doors of the "Hill," as she ran close up the bar, and there was a light on the shore at Johnson's, so that witness could tell perfectly how the "World" was heading; before they gave the signal to the "Hill," Fletcher called witness's attention to the "Hill," and said she might take choice which side to pass; the "Western World" had her signal lights burning; she was fully equipped with all that a boat requires in navigating the river; had a full crew and a full complement of officers; she had a good load in her, but not too heavy; not as heavy as he had seen her carry before; she steered very well; witness never was in his life before or since on board of a boat that steered so easily; she had a reputation on the river for her steering qualities, which were known to every officer that had ever been on her; he never saw an officer drunk on the boat, nor ever saw one play cards on board.

Witness had been on her the previous season; it was his second season on her when she was lost; Fletcher is one of the best pilots he knows, steady in his habits, and very particular and careful, particularly in landing boats, or in meeting other boats; if witness had been at the wheel, he would have done exactly as Fletcher did; he knows no particular in which Fletcher's judgment or prudence could have been bettered; he could perceive no fault in Fletcher's management.

Fletcher was not flurried, nor alarmed nor excited, but was cool and collected from all that witness could judge by his conversation and action, and he remained in the pilot house as long as he could do any good; heard no conversation on the "Hill" in relation to the "Western World" being insured; witness did not know whether there was any insurance on her or not; did not hear anything said by any one about throwing cargo off the "World" in order to lighten her, nor was there any opportunity for doing so, as she was so badly hurt that no throwing over of her cargo could have saved her; there was no effort after the collision nor time to make effort to do anything except to save life; witness was somewhat hurt at the time of the accident, and some time afterwards, on the return of the "Hill" to New Orleans from that trip, as he was walking on the levee, he met Gerard, the pilot of the "Hill," who was at her wheel when the collision occurred, and witness said to him, "Gerard, if you had pulled your boat to the starboard as much as you did to the larboard we never would have come together." Gerard answered that he was somewhat surprised when he heard the bell of the "World; that he was backing on the larboard and going ahead on the starboard to get her head down just about the time the collision occurred, and that was the reason he was so square across the river; he said that he had been steering after the lights of the Illinois, and said that he had come up to the foot of the Princeton Bar, and up along that bar.

Cross-examined.

I learned the river with Capt. Robert Brickell; he is the first man who ever paid me wages. I was part of the time with Mr. Fletcher, the witness who testified yesterday. I am not connected with Mr. Fletcher in any way.

It was a very short distance above Johnson's where we passed the "Illinois," perhaps two or three hundred yards; cannot state accurately because I did not notice. I was not observing very closely, but supposed we passed about one hundred and fifty yards outside the "Illinois." We had run between four and five miles after changing the four o'clock watch when we passed the "Illinois." We were running some eight or ten miles an hour, at our usual speed, I suppose. The "World" was very fast down stream; few could pass her.

We were a little above Johnson's when I first saw the lights of the "Hill;" it was just before we gave the signal to the "Illinois."

We were far enough out in the river to see the foot of Princeton bar. She was about the foot of the bar. Her lights showed as if she was about to turn up the bar. She continued running up the bar until we gave the signal; we were nearly a quarter of a mile off, perhaps a little less, perhaps a little more, when we gave the signal. Immediately on the signal being answered, both the engines of the "World" were stopped. As soon as the second signal was given, she commenced backing. She continued backing until the "Hill" struck. I do not think she had any more headway than the current gave her. She had made several revolutions back before the "Hill" struck her. Being asked if she had made a dozen revolutions, says he can't say. Being asked how many minutes had elapsed after the "World" commenced backing before the "Hill" struck her, says he cannot state.

It is two miles, may not be quite so far, from the point at which we were when we first saw the "Hill" to the foot of the bar where the "Hill" was. At the time we saw the "Hill" I could see the Mississippi shore as plain as I wanted to see it. I think the river is a mile wide, it may be more, at the point at which the collision occurred. At the time the collision occurred, I could see both shores. There is timber on the Arkansas shore, opposite the place at which the collision occurred; on the Mississippi shore there is a big plantation, and the timber is probably a mile or so back outside the plantation. Could see that timber plain; could see the bunch of timber at the foot of the Princeton bar, on the Mississippi shore, which we were steering by. It was a hazy night when the collision occurred; sometimes it would clear up a little. Occasionally a mist or a fine rain was falling. It was not as dark a night as I have seen. I saw no stars at the of the collision. There was no moon. Being asked if on such a night it was not easy for him to be mistaken as to the position and distance of a boat, says: No, I am perfectly sure that in my direct examination I have stated correctly the position of the two boats at the time of the collision.

After the collision, the "Hill" came round on the starboard side of the "World." She struck the "World" on her larboard side. I did not examine the "Hill" to see on which side she was injured. I was on the "Hill" about four days; went to Cairo on her. I heard them say on the "Hill" that her stem was a little shivered. I looked at her bow at Memphis, but did not examine it particularly. There was what appeared to be a scratch from a beam of the "World" on her stem rather on the larboard side. The cutwater was not hurt but a little only. The woodwork was shivered a little, seemed to be as much on one side as on the other. The blow knocked the "World" around a little. The "Hill" came alongside before she got square in the river. When the "Hill" came alongside, the "Hill's" bow was turned to the Mississippi shore, the "World's" bow to the Arkansas shore. I think I am not mistaken in the position of the boats after the collision. The "World" may not have

been exactly square across the river, she was what we call quartering. What I had to judge by was the light at Johnson's. I did not observe any light on the Mississippi side above Johnson's.

I have known Captain Fulton about five years. Have known him by character longer. I have known him in command of the "Andrew Fulton" and the "Alton." Can't say how long he was on either. Never knew him to be in command of any other boats.

The "Western World" had been lengthened; part of her on her second season, at the time of the collision. Don't know how old she was when she was lengthened, nor exactly when she was lengthened. I don't know how long Mr. Fletcher was on the "World." We came out together on her that season. Can't say whether it was in August or September.

The "World" had not hit the bank or a bar that night, nor on the trip down; had struck no log except light drift—nothing to hurt. Don't know whether she had any water in her hold or not at the time of the collision.

I was boarding with George G. Campbell at the time of the collision. On my return after the collision, I frequently talked with Mr. Campbell about the collision. Being asked whether he ever said to Mr. Campbell words to the effect that this was an unfortunate accident, that he was sorry for it, but that the "Hill" was not to blame, says that he never said any such thing to any body.

The river is pretty wide, above the average width of the Mississippi River from bank to bank at Princeton bar; but it is not so wide from the bar to the Arkansas shore. Being asked what distance it was from the bar to the Arkansas shore at the stage of water when the collision occurred, says I could not say. The bar on the Arkansas shore is a very large one; it is covered in high water. It is a big bar, but there are larger ones.

Being asked if, by reason of the width of the river and the fact that there is a bar on both sides, the navigation is not difficult at that point of a dark night, he answers he does not so consider it when he can see both shores.

Being asked if it is not more dangerous to run a heavily leaden boat down stream of a dark night, than to run a boat up stream, he says: I do not so consider it when I can see both shores, at that stage of water. In low water I consider it more dangerous.

I do not know how much cargo the "Western World" had on board at that time.

Being asked how it happened that he was sitting up in the pilot-house so long after going off watch, says, he saw the lights of the "Illinois" and thought he would wait until she passed. He was smoking a good segar and was chatting with his partner; afterwards he saw the lights of the "Hill," and had the curiosity to sit up until she should pass.

Immediately after the collision I went down into the cabin. Per-

sons might have got on board of the "World" and commenced throwing off the cargo without my seeing it.

I think every effort was made by the officers of the "Hill" that could be made to save the lives of the passengers. I think it was about half a mile from the place where the collision occurred to the Arkansas bar.

There is a slough in high water that runs through Princeton bar, near the head of the willows. It is not a deep slough. It is what we call a low place. The collision occurred just below this low place, to the best of my judgment.

Being asked how far it is from the place where the collision occurred to the place at which the "Hill" was when he first saw her lights. Can't say exactly how far it was.

Being asked how far it was from the place at which the "World" was when he first saw the "Hill's" lights to the place at which the collision occurred. He says he was not steering the boat, and was not paying attention enough to tell the exact distance.

Being asked what length of time elapsed between the time at which he first saw the "Hill's" lights and the time of the collision. Says he cannot say.

Being asked how long it was from the time the "World" gave the first signal to the time the two boats came in collision, says: It was a very short time; but cannot state how long.

The point at Johnson's has changed a little, but very little, between the time of the collision and the time the plan A, B, was made. The Princeton bar has altered its shape by making out into the river further. The bar was nearly a straight bar at the time of the collision.

The "World" was parallel to the bar, straight with the current, when Mr. Fletcher called my attention to the boat just before the collision. The "Hill" came out quartering from the Mississippi bar, and she struck with the larboard side of her stem; not exactly, but a little more that way. A person, standing on the larboard side of the "Hill" as far back as the clerk's office, could have seen the "World." He could have seen her from either guard as far back as the clerk's office.

(Signed) DAN'L D. BLOYS.

Sworn to and subscribed before me, this 11th May, 1854.

(Signed) C. V. JONTE,
Justice of the Peace, Parish of Orleans.

The above testimony taken by consent to be read on the trial; objections of form waived; all others reserved.

(Signed) R. H. MARR, for Claimant.

U. S. District Court, Eastern District of Louisiana.

ALEXANDER NORTON
vs.
Steamboat "H. R. W. HILL," &c. } No. 6853.

Deposition of Andrew Fleming, for libellant, taken and reduced to writing by Wm. H. Hunt, U. S. Commissioner, at the city of New Orleans, on the 30th day of June, 1854.

In presence of Proctors Jno. Finney, for libellant, and R. H. Marr, for claimants.

Offered and read in evidence for libellant, January 2d, 1856 :—

(For map No. 2, see original, page 62.

Andrew Fleming, who, being sworn for libellant, says: I am a steamboating man—a pilot; I have been so since 1830. In December, 1852, I was on the "Illinois" steamer; I recollect hearing of the collision between the "Hill" and the "Western World" just after it occurred. The "Hill" came up to where we were shortly after. We got to the mouth of the Ohio before the "Hill," and she struck us there. I was in bed when she came there, and I afterwards learned from the crew that there had been a collision.

I met a boat that I took to be the "Western World" at the point marked X on the chart opposite G. W. Johnson's. I had got about to the point marked Z, when, having heard from my partner when I came on watch that the "Hill" was behind us, I looked round and saw lights which I supposed the "Hill's" at about the point Y; I bore in towards the shore and the taps of the bells were answered correctly, and I passed the "Western World" as I supposed her to be, at the point X, or thereabouts; this between 4 and 5 o'clock in the morning. I met no other boat that morning after passing Princeton bar; coming down, I passed a boat which I heard was the Mohicani that morning, about 3 miles above Princeton; she was lying at shore. After I came on watch I met no other boat coming down. I saw no other boat going up, except the boat I supposed to be the "Hill," as I stated before.

The map, marked A B, appears to me to be a very correct map; the five lumps, or islands, marked "sand-bar," on each, were not there—but there was one continuous line of a sand-bar at the last low water; there was a continuous cut bar from the Princeton bar extending somewhere about opposite Princeton Landing. The lumps have been made there since.

When I heard of the collision after it had occurred, I supposed, from the position in which I had seen two boats, that they must have come together down about the foot of the Willows on the Princeton bar. The boat that I took to be the "Western World," I would suppose, if she had only floated down and let her wheels turn, would

have been past the head of Princeton bar. (Objected to by Mr. Marr.)

From the map No. 2, if it represents the collision, I should say, from the position of the boats when I saw them, that the "Western World" must have rounded to and gone up stream to be where she is there represented.

I am still pilot on the "Illinois;" I am acquainted with Mr. Fletcher, who was the pilot of the "Western World;" I have known him since 1834 or thereabouts. He has always had the reputation of a good pilot—"A No. 1;" I have never seen him in liquor; I have seen him drink as I do myself—but I never was known to get drunk; I never heard any charge of drunkenness being made against him until in this case.

I ran the river on the night in question, about as indicated by the mark beginning at "Poverty Point" on the map, up to Johnson's; I always aim to run it that way at that stage of the water; I couldn't run it that way in low water. I have seen boats running a different course.

It is not a usual thing for one boat when meeting another and receiving a signal tap, to cross the signal; it is usual for the boat that gives the first signal to go whichever way she first signals for; this has been the rule ever since we commenced ringing bells, and before the law required this course.

Cross-examined.

I came on watch at "Poverty Point." That point is about near two miles from the foot of Princeton bar, it is about a mile or a mile and $\frac{1}{4}$ from the foot of Princeton bar to Johnson's. I came on watch at 4 o'clock in the morning.

I suppose from the time I got on watch until we got to Johnson's we were making something near 5 miles an hour; it was something near 3 miles and a quarter from the place where I came on watch to where I met the "Western World;" I couldn't tell how the "Western World" was running—what speed she was making. I don't know how the "Hill" had been running that night.

It was a pretty dark night when I came on watch; I don't think it was raining when I came on watch; it might have been "misting" a little, but I don't say whether it was or not; I found no difficulty in navigating that night. About two miles above Johnson's it was raining, and I would not have been able to run up stream—I would have had to stop, if I had not already done so at a woodyard. The light shown from the woodyard was on the Arkansas shore; I could hardly see it two lengths of the boat off in landing, because it was raining so hard; the distance was about two hundred yards long.

I saw no light at Worthington's at the time I stopped there or before. It was pretty much opposite Worthington's—a little quartering if anything—where we wooded.

I made no complaint to Captain Smithers of the difficulty of navigating the boat that night.

I could not tell how close we were to the "Western World" when we passed. Boats generally pass pretty close about there. She was running about where I would have come down. I would not have been in so close to shore if it had not been that I met the "World" or some other boat; I always in the night do not run ashore as close as in the day; and I would not have run the shore so close that night if she had not been there.

It is very hard to judge of distances on water in the night or even in the day.

I was just about where I stated that I saw the "Hill;" I knew where I was; the stern of our boat must have been lying out towards Princeton bar, consequently the "Hill" was not in a line with our stern.

I couldn't tell what distance the "Hill" was from us when I saw her.

As I was running round the Arkansas bar I could see the shade of the timber on both shores.

If I were running close under the Arkansas bar going up, and were to meet a boat, and she gave the signal to run between me and the bar, when she was in such a position that she could not get between me and the bar without crossing my bow, I would immediately stop and commence backing.

It is a little easier to navigate a boat on a dark night going up than going down—it is a little safer too.

The stage of the river must have been about as the map represents it. It was a pretty good stage.

Re-examined in Chief.

I had a conversation with Capt. Newell about the collision, he asked me if I had met the "Western World," and I told him I had met a boat I took to be her about opposite Johnson's. Captain Newell remarked that he had run worse nights than that, that he could see both shores. He asked if I had seen the "Lewis Whiteman" that night, I said not. He said the "Whiteman" was between us and the "Hill." I told him that was more than I knew, that I did not see her. He asked me if I had seen a light over at Flournoy's above Princeton? I told him I did not. He asked if I had seen one at Johnson's? I told him no, that we had rung our bell in passing, for wood, but had seen no light.

Capt. Newell also told me in that conversation that the collision had happened about as represented on the map No. 2, near the head of Arkansas bar. I answered that the "World" must have rounded to, to get there and come up stream. He replied I think in these words, "By God, she did."

(Signed) A. FLEMING.

Examination taken and reduced to writing by me and by the witness subscribed and sworn to at New Orleans, this 30th day of June, 1834, before me.

(Signed) WILLIAM H. HUNT,
U. S. Comm'r.

U. S. District Court, Eastern District of Louisiana.

ALEXANDER NORTON
vs.
Stm'r "H. R. W. HILL." } No. 6853.

Deposition of Edward Morgan for libellant, taken and reduced to writing by Wm. H. Hunt, Esq., U. S. Commissioner, at New Orleans, June 16th, 1854, in presence of Proctors Finney and Marr, and read and offered in evidence for libellant, 2d January, 1856.

Edward Morgan sworn for libellant says: I was on the steamer "Western World" at the time of the collision between her and the "H. R. W. Hill;" I was first engineer; I was on watch at the time of the collision; the bells of both engines rung to stop before the collision, and then immediately both engine bells rang to back; we made from six to ten back revolutions before the collision, I can't state the exact number, but I think from six to ten and may be more; both engines were backed at the same time, started at the same time and stopped at the same time; we stopped backing because the bells rang to stop; the boats had come together just about the time.

I should suppose 5 or 6 revolutions of her engines ought to have stopped the headway of the "Western World;" there was not a very great current at the time, I judge from the stage of the river.

The "Western World" had a great deal of power and handled well; I have been on boats that would not have stopped their headway in as short a time; if the other boat had used the same exertions that we did there could not possibly have been any injury; the "World" was in good condition, and had, I believe, as good a set of officers and crew as there were on the river; I believe they were all temperate men; I knew of not one case of drunkenness among them; Mr. Fletcher was not a drinking man to my knowledge; had he been so, I would known it.

I know that there never was any card playing on the boat whilst I was on her, by the officers.

I have always understood the "Western World" to be an easy steering boat when I was on her, and I believe she was; if she had been a hard steering boat, I should as engineer have known it, for in that case a good deal of steering would have to be done by the engines; in bad steering boats the wheels have to be brought into service in steering; the engines in proportion to the size of the boat were of good power; they backed pretty strong and never missed.

Probably just at the time of the collision or a little after, the en-

gines stopped backing, not more than three minutes after, if that; the water came over the decks; we had shipped up one bilge pump and were in the act of shipping up another, when I discovered the water on deck; then I thought I had been there long enough.

I do not think it was possible to have saved the boat.

It was a dark night but not too bad for running; I don't believe I ever have known a boat to lie up for such a night unless it was in anticipation of a storm.

I am a licensed engineer; I have been on the river as engineer for 21 years, about 18 years as head engineer; I am now on the Columbus. The "Western World" was well found and well manned.

Cross-examined by R. H. Marr, Esq.

The stage of the river at that time was neither high nor low, what we might call a good stage; I don't know whether it was raining at the time of the collision or not, as I was under shelter; I don't know if the wind was blowing or not, if it was, it was not blowing hard; it was a cloudy night.

I stood at the starboard engine; the "Western World" had a fair load, a tolerable down stream load, nothing extra; we were not carrying a very big head of steam; were making probably 10 or 12 miles an hour.

Before the bells rang for backing, I did not hear the signal bell of the "Western World" rung; my position was such that I could not well have heard it; it must have been ten minutes from the time the bells first rang for the engines to stop, to the collision; it was somewhere in that neighborhood, I can't say positively; I did not go ahead any more on the engines.

It takes ten seconds to stop the engines and ship up and back; I believe I can do it in 10 seconds; I did it on this occasion as quick as I could. In going down stream we were making probably 12 revolutions a minute, in backing we made not over half as many I suppose; I believe it was after the collision that we stopped backing; it was so near the time of collision that I can't say whether it was before or after.

When I found the water on deck, and left the engine room, I went on to the hurricane roof; I remained there a very short time, not 2 minutes; I went on the "Hill" after that; the boat was on her beams ends before I went on the "Hill;" I staid on the forcastle of the "Hill" a minute or half a minute, and then went into the engine-room; I had no conversation with the man at the starboard engine of the "Hill;" I had no conversation with the boy at the larboard engine, but merely asked him what boat that was, I had not then found out; I don't recollect having any other conversation with him; the engines of the "Hill" were still when I went into the engine-room; the "Hill" was alongside the "Western World" holding her up; it was then I first saw the "Hill" alongside of us when

I went on to the hurricane deck of the "Western World," she was not then alongside of us, but nearly head on to us.

She never left the "World" until she was cut loose, and the moment we were cut loose, the "World" turned right over.

It could not have exceeded 5 minutes from the time of the collision to the time the "World" turned over.

The "Harry Hill" was on our starboard side head on; I jumped on her starboard guard from our starboard guard.

I had been on the "Western World" about a month or a little over.

I should judge the "Western World" would carry 1,000 tons; her power was not extraordinary for her tonnage, but I considered it good power tonnage.

The people of the H. R. W. Hill made efforts to save the passengers; I left the "Hill" in the morning after breakfast and got on the Mohican, I believe, and came down.

The engine-room of the "World" was so fixed as to close the doors; I don't recollect whether the doors were closed or not that night; from the construction of the engine-room and the doors, I could not see out into the river when I was standing at the engines; I would have to leave the engine and step forward to see; I did not leave the engine to step forward and see when the engines were stopped or previous to the collision.

Re-examined.

When I went up on the hurricane deck, I saw the mate and the pilot, Mr. Fletcher, on deck; it was the mate's watch; it was between 4 and 5 o'clock in the morning.

(Signed) EDW. MORGAN.

Sworn to and subscribed before me at New Orleans, this 16th day of June, 1854. (Signed) WM. H. HUNT,
U. S. Commr.

U. S. District Court, Eastern District of Louisiana.

ALEX. NORTON, Owner of Steamer "Western World,"
vs.
Steamer "H. R. W. HILL," &c. } No. 6853.

Deposition of Capt. W. H. Fulton for libellant, taken and reduced to writing by Robt. M. Lusher, Esq., U. S. Commissioner at New Orleans, August 9th to 10th, 1854, in presence of Proctors Finney and Marr, and read and offered in evidence for Libt. the 2d January, 1856.

William H. Fulton, a witness for the libellant (owner of the steamer "Western World"), having been duly sworn, deposes:—

I was on the "Western World," captain of her, at the time of the collision with the "H. R. W. Hill;" I had been asleep before the collision; the mate was on watch; the collision occurred about 4½ o'clock, A. M., on Tuesday, the 14th December, 1852; I was

awake and on the boiler deck when the accident occurred, and had been up about half an hour before.

I saw the "H. R. W. Hill" before the collision; she was between $\frac{1}{4}$ and $\frac{1}{2}$ of a mile off when I first saw her; she was on the larboard side of the "Western World," below her, in the foot of the bend known as Princeton bend, and near the foot of Princeton bar; the "W. W." was at this time near the head of Princeton bar.

We had met the "Illinois" just before, and in walking round and looking at her, I discovered the light of the "H. R. W. Hill" below us; I then went back into my room again, and shortly afterwards heard the signal—one tap of the bell—given by the "Western World:" the engines of the "Western World" were immediately stopped. The "H. R. W. Hill" signalled in response at the time, but as the ringing of the engine bells of the "Western World" alarmed me, I am not positive with what signal she responded; I immediately went out on the boiler deck again and stood directly in the centre of the boat, under the signal lamp, which was burning at the time; the boats were then very close together, the "Western World's" engines were still going back; I heard the bells for one engine on the "Hill" rung to stop and back—probably three or four seconds, not over that, I think, before the boats struck; I suppose one engine on the "Hill" had made a few revolutions back before the collision took place—at this time the boats were both at or near the middle of Princeton bar, to the best of my judgment. The "Western World" was pointing up and down the river, in or near the channel, which at that time was near Princeton bar—the "Hill" was pointing towards the Arkansas shore, her stern being directed towards Princeton bar; I saw no person on the roof of the "Hill," except the mate, at the time of the collision; the mate I knew by his voice; I did not know him personally, but saw him on the roof of the "Hill," and afterwards recognized him on the "Hill" by his voice; I know that there were four persons on the roof of the "Western World" at the time of the accident—the mate, both pilots, and the watchman, but I don't know their position.

As soon as the accident occurred, we hailed the "Hill" to come alongside, that we were sinking and wanted assistance; the mate of the "Hill" said that they would come alongside, and at the same time told us to throw a tarpaulin over our bow to try to stop the leak. I told the pilot to hollow through the trumpet and tell our engineer to ship up all our bilge pumps, and at the same time told the mate to examine where we had been struck; the mate made an examination immediately, and reported that the water was running through a hole as big as a hogshead, and that it was impossible to save the boat; by the time this report was made the "Hill" had come up alongside, on the starboard side. Our bow had been forced a little to the starboard, by the blow on our larboard. I think it was not over two minutes from the time that the "Hill" came alongside, that we were sunk to the boiler deck, and it was not over six

minutes when the "Western World" was bottom up; she careened to the larboard side—her upper works, and her hull came bottom up next to the "Hill," on the starboard side.

The "World" was rounded on the larboard side near the stem; a hole was broken in her.

From the number of revolutions the engines of the "Western World had made back, I do not think that she could have been going faster down the river than the current carried her at the time of the accident.

I never heard but the bells of *one* engine on the "Hill" rung until after the boats struck; both engines on the "Western World" were backing at the time the accident occurred; at the time of the collision there was no one up in the cabin but a cabin boy and myself; I soon started the barkeeper and the clerk up to call on the passengers and crew to save their lives.

It was a dark night and raining a little, but not so dark as to prevent a man acquainted with the shape of the river from seeing the banks sufficiently well to steer; it was then high water, and boats were running; we had met one just before; it was not too dark for a boat to run at that stage of water; in low water we do not run at night.

The signal tap of the Western World was repeated by her immediately after the response by the "Hill," which I have already mentioned; I am not certain—can't remember—whether the "Hill" answered the second signal or not; the boats were then very close together.

There had been no drinking on the "Western World" that night, nor the day before; there was not an officer on the boat that we considered a drinking man; nor to my knowledge was there any card playing on the boat by the officers.

Mr. Fletcher, the pilot of the "Western World" at the time, I have known some six years; I had known him intimately for some two years; he doesn't probably drink liquor over six or seven times a week; I have seen him take a drink per day—perhaps sometimes two; his reputation as a pilot is of the best character; probably others are known to be as good pilots as he, but none to be better than he as a pilot.

I am now captain of the steamboat "Columbus," running from St. Louis to New Orleans and back; I have been on the Ohio and Mississippi Rivers for over 22 years, and was known as a pilot on the Ohio from '41 to '44; I ran the steamers "Andrew Fulton" and "Alton" for between four and five years just before the time of this accident.

August 10th, resumed.

Capt. Norton, the libellant, had come down with us part of the trip—as far as Memphis; he had some business in Springfield, Ill., and stopped there to go back—on legal business—some law-suit

which he had there; Capt. Norton was the sole owner of the steamboat "Western World;" I have never seen her papers and policies of insurance since the collision, and am under the impression that they were lost.

There were printed rules on the boat; the officers of the boat were not permitted to play whilst she was under way, only while she was in port, as is customary on almost all boats.

The "Western World" was insured that trip for about $16,000; her value was between 24 and 26,000 dollars; her freight list was worth about $2,600 00; the passenger list between 6 and 700 dollars; the freight list was not insured that trip; it had been usual to insure it, and it was actually insured on her every trip—she had made four from the 20th of August; I had advised Capt. Norton to insure for the trip in question, but he declined, saying that it was now a good stage of water, and that he had been paying insurances and would not pay any more on the freight list when there was a good stage of water; the freight and passenger list may have been something more than I have mentioned; I was unwell for a few days before the accident, and had therefore neglected collecting for a time, but the amounts I have mentioned I knew to have been actually due; there was but one attempt made to save anything out of the office, as it was feared that the boilers might come in contact with the water and create sufficient steam to suffocate us, the office being immediately over the boilers and steam being actually generated by their contact with the water.

I had not counted the money in the safe from the time the boat left St. Louis, but we had made drafts there on New Orleans to the amount of $2,200 00. This, together with what we had on hand and what we collected, made me suppose that there was about $2,100 00 remaining in the safe after what we had paid out for fuel, &c., up to the time of the accident.

I am not positive as to the amount, as I did not count it. To the best of my knowledge, and according to my impression, the safe was not locked; the key was in my room, No. 27, I believe, and the lock was a little out of order, as the safe fastened with a peculiar turn of the handle.

The officers and crew of the "Western World," generally, lost their clothing. I lost mine, and also my hat. To the best of my knowledge about 28 persons were lost on the boat by the accident.

We left three officers to look after the wreck—the mate, head engineer, and carpenter. I should have remained myself had I not been unwell. We also left some of the hands of the boat to assist them.

I heard no person give orders from the "Hill," except as I have already stated from the mate, who might also have said "throw that freight off the forecastle;" but I don't know or remember that he said so. I heard no orders from the captain of the "Hill." I heard no such response from the "World" as "I'll be damned if I will,"

or any other such expression; and if such had been used I would have heard it, I think.

As soon as the "Hill" came alongside of the "Western World" I went over on board of the "Hill," and placed myself in a conspicuous place on the edge of the boiler-deck, with a great many persons on top trying to make their escape on to the "Hill." The noise and confusion at this time were so great that it was impossible to hear orders given by any one particular person. I could see everything that was done. My impression is that Mr. Fletcher, the pilot, was about one of the last persons that made his escape on to the "Hill" previous to the "W. W.'s" turning bottom up.

The "Western World" was well found in every respect, and in good running order when she left St. Louis, and up to the time of the accident. No steamboat steered better than she. She had not a full cargo on board, could have carried a hundred tons about more; her guards were clear of the water. She was well officered and manned in every respect. I was put in command of her at Memphis. I can safely say that I never was on a boat provided with better officers than she was at the time. I now have on my present boat (the Columbus) the same mate, and first and second engineers; the mate had charge of the "Columbus" on her last trip from St. Louis to New Orleans and back.

After I took my position on the "Hill," on the boiler-deck, the "Western World" floated not over four minutes; she was sunk to the boiler-deck before I went there, because I saw that the boat was lost, and there was so much noise and confusion that no orders of mine could be heard. I therefore deemed it best to save No. 1, and to place myself where I could see all that was going on.

The persons lost were all deck passengers with the exception of one slave boy, a fireman, who belonged to the boat—that is, he was hired to and employed on the boat, not owned by her.

When I first saw the "Hill" my impression was that it was one of Vicksburg packets going to Princeton after cotton.

At the time of the collision there did not appear to be any passengers upon the "Hill," in sight of the "Western World." I saw quite a number of persons on the "Hill" after she came alongside of the "W. W.," but none at the time the blow was struck.

The "H. R. W. Hill" was struck and injured only on the stem, which was knocked towards her starboard side some inches.

I was a passenger from Princeton to Cairo on the "Hill," after the collision.

On the night of the collision, I saw no other ascending boat than the "Hill" about there, except the boat which we supposed to be the "Illinois;" there was none between the "Hill" and the "Illinois;" if there had been I should have seen her; she could not have escaped my attention.

Chart A B, bearing the signatures of I. P. Benjamin and L. Hunton, examined by witness. (Ante, page 30.)

I think this a corect chart of the river. At the time of the collision, the spur marked "A," near the foot of the Princeton bar, was not there, I think. The channel then ran about the course of the dotted line which I have delineated between the letters "b" and "c." The position of the "Western World," at the time of the collision, was straight up and down the river, near or in the channel, about the middle of Princeton bar.

I had no interest in the "Western World," and it was not my watch at the time the accident occurred, though I was up at the time, and could see all that transpired.

(Signed) W. H. FULTON.
(Signed) ROBT. M. LUSHER,
U. S. Commissioner.

Wm. H. Fulton cross-examined.

I had gone to bed early, being unwell, the night of the collision, but I had been up several times, though but a short while at a time. My room was on the larboard side, about the third or 4th room from the boiler deck, and immediately over the after ends of the boilers. I got up about half an hour, or nearly so, before the collision occurred. We met the "Illinois" after I got up. After the passing of the Illinois, I went back to my room again. A signal given to another boat caused me to come out; this boat proved to be the "Hill" afterwards. From the time the Illinois passed up to the time when I heard the signal, probably not over eight or ten minutes elapsed. I went out immediately after the signal, and after the engine bells of the "World" rang for her to stop and back. I heard the signal of the World answered by the Hill, but I can't say with how many taps. This was about the same time that the bells of the engines of the "World" were rung for her to stop and back, and this it was that marred my hearing of the response signal of the Hill.

We met the Illinois just about the head of Princeton bar, and near the Arkansas shore, which she was ascending.

After looking at the Illinois, and before I went back to my room, I saw the lights of the "H. R. W. Hill." This couldn't have been more than 2 or 3 miles run after we passed the Illinois. When I first saw the lights of the "Hill," I reckon she was about three-quarters of a mile off. When I went back into my room, I hadn't time to lie down before I heard the signal already spoken of.

I didn't occupy much time going back to my room. It was some time after we passed the "Illinois" that I went back. On hearing the signal bell, I went immediately forward, occupying less time in doing so than I had taken in getting to my room before I went to the boiler deck. The engines had started back when I got there. We did not stop backing until after the collision occurred. I could see the Hill plainly when I got out on the boiler deck; she was about one-fourth of a mile off just then; might have been a little less. The "World" repeated her signal after I got out on the boiler deck.

I think it was answered, but I have no recollection how. I saw that there was going to be a collision.

The engine bells of the "World" were not rung, in my hearing, after I got out on the boiler deck, or on any other occasion than that which I have mentioned.

When I went out on the boiler deck, the "Hill" was to the left of us. I am positive as to her position. To the best of my judgment, the "Hill" was then close to the Princeton bar. The "World" was then, probably, one-third, or near one-third, of the breadth of the river between the bars from the Princeton bar. At that stage of water, the river there was, I suppose, half a mile in breadth.

I watched the "Hill" closely; don't think I took my eyes off from her from the time when I went on the boiler-deck to the moment of the collision; I did not hear but one of the engines' bells of the "Hill" rung to stop and back her up to the time of the collision; my impression is that one of the engines was going all the time up to the moment when the boats struck, and the other one was backing.

The "Western World" received the blow on the larboard side, within ten or fifteen feet, at the most, from the stem.

As soon as the blow was struck, the "Hill" backed out from the "World," and came up alongside the starboard side of the "World," and made fast to her, occupying three to four minutes in these movements. Some one, I think, on one of the boats, I heard give the order or make the request for her to "go ahead, and push us on to the bar."

The "Hill" was not alongside of the wreck of the "World" over ten or fifteen minutes in all, within which time the wreck had floated out of sight. The "Hill" then went ashore, and landed at the foot of the Princeton bar, which was a mile or a mile and a half, short of two miles, from the place of the accident.

It was not yet daylight. She left some of the officers and hands of the "World" there, and shoved out again, and went on up the river.

From the head to the foot of the bar, at that stage of water, the distance of dry bar was from a mile and a half to two miles. I can't state with certainty.

By the time the "Hill" got alongside of the "World," the guard of the latter, which was sinking, caught in some way on the guard of the "Hill," and so remained for some minutes before she got loose and careened.

The amount of water there is some 60 feet depth. The careening of the "World" I supposed to have been caused by the waters rushing in on the larboard side.

Before the accident, the "World" was coming down the river at the rate of from ten to fifteen miles an hour. I suppose she was running at this rate when we met the Illinois. Her rate of travel

per hour I estimate from her running from Memphis to Princeton—near 300 miles—in from 24 to 26 hours.

Our boat had not struck anything that night coming down and from St. Louis. She was not leaking, was perfectly sound in every respect, had been lengthened about 60 feet, and thoroughly overhauled when she was two years old, and was as sound a boat for her age as could be found on the river. She was about four years old when the collision occurred.

It was a dark night, raining a little at the time of the accident.

In low water, in my experience, it is much safer running a boat up stream than down; in a high stage, the risk is about the same, probably not so much going up as coming down. It is not so hard to steer a loaded boat down stream as a boat ascending; though it is harder on the engines. In high water, it is much easier to steer a boat down stream than up.

I think I didn't leave over $10 with the carpenter who was left in charge of the wreck; I hadn't more to leave. I believe that I told them that the expenses incurred would be paid at Cairo when they came up.

The wharf boat at Cairo then belonged to Capt. Norton.

The iron safe of the "World" was not open at the time of the collision; by a peculiar turn of the handle, it could be opened; I don't know that the 2d clerk of the boat knew that it opened with this handle, nor any one else but myself. The 2d clerk was not sleeping in the office; the office was locked up at the time the accident occurred.

After I got on the boiler-deck of the "Hill," I requested several of the hands of the "World" to get the safe, and get out its contents, telling them that the money and the policies of insurance were there, and that they could open it by the turn of the handle; but no one got to it that I am aware of. I said nothing about my hat. At the time this request was made, the boat was so far sunk that there was at least five feet of water in the office. This was about the time, I think, when the guards of the "World" were caught on to those of the "Hill." Great fear was manifested in the attempt to go to the safe. I could not see the entrance to the office, which was inside of the cabin; if it had been outside, there would probably have been a better chance.

I am not related in any way to Capt. Norton; had no interest in the "Western World;" have none in this suit.

Myself, two pilots, three engineers, and several of the hands, quite a number of us, went up on the "Hill." There was no drinking by my officers that I saw or know of on the Hill immediately after the collision. There was some card playing and drinking the evening of the same day, but nothing unusual. I did not see Mr. Fletcher, the pilot, drinking a few minutes after the accident, and have no knowledge of it. I observed him particularly during the day, and had

conversation with him several times, and I have no knowledge of his having been the worse for liquor.

It was a pilot by the name of Blois on the "Western World" that was hurt by a fall about the time of the collision. He is a small man and Fletcher is a large one.

I had no opportunity of examining the "Hill" to see what injuries she had received, until she got to Cairo. The only injury I could discover was on the stem probably between the marks of 5 feet and 9 feet; on the stem, which was split, and the piece that was broken was shoved or bent over to the starboard side. The injury must have been received on the larboard side of the stem of the Hill.

She must have received the greatest portion of the blow on the larboard side of the stem.

I saw no hard ends of the "World" stuck in the stem of the Hill on my examination of her; would have seen them if there had been any in her above water. I am satisfied that I am not mistaken in my statement of the side which the stem of the "Hill" was shoved to.

The "Hill" was drawing from 7 ft. to 8 feet water when I examined her; not less than seven.

(Signed) W. H. FULTON.
(Signed) ROBT. M. LUSHER,
U. S. Commissioner.

U. S. District Court, Eastern District of Louisiana.

ALEXANDER NORTON, owner of "Western World," vs. Str. "H. R. W. HILL," &c. } No. 6853. In Admiralty.

Depositions of Peter Bougher, George Wideman, J. P. Symonds, George W. Sparhawk, N. J. Eaton, Saml. Mackall, taken under commission of Nov. 4th, 1854, by David C. Tuttle, Louisiana Commissioner, at St. Louis, Mo., and certified November 20th, 1855, and read and offered in evidence for libellant, Jan'y 2d, 1856, on interrogatories and cross-interrogatories.

Libellant's first interrogatory. Do you know the parties to this suit; where do you reside, and what is your occupation, and how long have you pursued it; what is your age?

Peter Bougher answers. I know the parties to this suit; I reside in Steubenville, in the State of Ohio, and am by occupation a steamboat mate, which I have been engaged in for the last twenty-one years; my age is forty-two years.

Libellant's second interrogatory. Were you on the "Western World" at the time of the collision between her and the "H. R. W. Hill?" If yea, in what capacity; were you or not on watch at the time, and where were you standing at the moment of the collision; when did the collision occur? State day and hour.

Peter Bougher answers. I was mate on the "Western World" at the time of the collision between her and the steamboat "H. R. W. Hill." I was on watch at the time of the collision, and was standing on the hurricane roof at the moment of collision, with my hand on the bell frame. It was regular watch. The collision occurred on the morning of the 14th of December, 1852, about ½ past four o'clock in the morning. The "H. R. W. Hill" ran into the "Western World," and sunk her.

Libellant's third interrogatory. Did you see the "Hill" at and before the moment of the collision? if yea, please tell how the collision happened, as far as you know and deem it material.

Peter Bougher answers. I saw the "Hill" when she was probably five miles distant from the "World," and saw her all the time from then until she struck the "World," the "Hill" coming up the Princeton bar, and never left it until she turned out across the bows of the "World." She struck the "World" on the larboard side forward of her bitts. The bitts are located about five feet aft of the "jack-staff." As soon as the boats came together, I immediately left the hurricane roof and went down on the main deck, and found the "World" in a sinking condition, and hailed the "Hill" to come alongside, that the "World" would sink in five minutes. Some one from the "Hill" told me to throw a tarpaulin over the bow, and I replied that it was no use, as there was a hole in her as large as a barn door. The "World" was descending the river and never changed her course until after the "Hill" struck her. The "World's" engines had been stopped for some time, and she was backing at the time the "Hill" struck her. I think that the starboard engine of the "Hill" was not stopped until after the two boats came together. I am certain that one of her engines never stopped.

Libellant's fourth interrogatory. Where did the collision occur? was it nearest the Princeton bar or the Arkansas bar? how far down the Princeton bar did it occur?

Answer. The collision occurred nearest the Princeton bar; it occurred at least half way down the bar, perhaps a little more.

Libellant's fifth interrogatory. When you first saw the "Hill" where was she; which shore was she nearest? At that time to which shore was the "Western World" nearest? How did the boats come together? Did the "Hill" run out from the Princeton bar or the "Western World" run in nearer to that bar? Explain your views fully.

Answer. When I first saw the "Hill" she was coming up the Mississippi shore, and perhaps about five miles down the river. At that time the "Western World" was nearest the Arkansas shore, and when she got down opposite Princeton bar she kept nearest the bar down the river, about the same distance from the bar in the same course until the "Hill" struck her. The "Hill" was coming up the Princeton bar, and turned out from it and run into the "World."

Libellant's sixth interrogatory. When you saw the "Hill" coming up, where did you think she was going.

Peter Bougher, witness, answers. When I first saw the "Hill" coming up, she was running up the Princeton bar, and I don't know that I *thought* anything about where she was going.

Libellant's seventh interrogatory. Did the "Western World" stop and back her engines before the collision? If yea, how many revolutions did she make?

Answer. The "World" was stopped some time before the boats came together, and she was backing at the time, and I think her headway was pretty well run out.

Libellant's eighth interrogatory. Did the "Hill" back both engines before the collision? Answer according to the best of your knowledge and belief.

Answer. I think that the "Hill" did not back either engine before the collision, and that she did not stop the starboard one.

Libellant's ninth interrogatory. Where was the "World" struck, and what damage was done? Do you think it possible the "World" could have been saved from sinking after suffering the injury which was caused her by the collision?

Answer. The "World" was struck on the larboard side just forward of the bitts, and I think her whole bow was knocked out. It was not possible to have saved the "World" from sinking under any state of circumstances after the collision.

Libellant's tenth interrogatory. State whether or not the "Western World" had any and what signal lights at the time of the collision?

Answer. The "World" had a signal light at the time of the collision which was burning at the time.

Libellant's eleventh interrogatory. How was the "World" officered and manned at the time of the collision? What was her condition in respect to soundness and seaworthiness?

Peter Bougher, witness, answers. The "World" had a good crew aboard of her, and she was well manned and found, and she was in every respect sound and seaworthy at the time.

Libellant's twelfth interrogatory. What kind of a night was it? Was it or not too dark a night for a descending boat to run? Could you see the shores?

Answer. It was a very cloudy night, but sufficiently light to see to run; we could see both shores plainly; I think it was raining a little, and shortly after the collision it rained hard.

Libellant's thirteenth interrogatory. How was the "Western World" loaded? Had she received any injury in the course of her voyage? Was she making an usual amount of water before the collision? Did she require the pumps to be used more than usual?

Answer. She was not loaded very heavy; her guards were clear of the water. She had received no injury during that trip before

the collision. She was not making any water that I recollect. The pumps were not used more than usual.

Libellant's fourteenth interrogatory. Did you or not see any of the officers of the "World" intoxicated, or drinking excessively on that trip? State all you may know about their drinking on that trip? What was the general character of the officers for temperance and knowledge of their business.

Answer. I did not see any of the officers drink any liquor on that trip; they were all temperate men.

Libellant's fifteenth interrogatory. Who were on the hurricane deck of the "World" at the moment of collision?

Answer. Myself and the watchman were on the hurricane roof at the moment of collision.

Libellant's sixteenth interrogatory. Where did you pass the steamer "Illinois," and how long before the collision?

Answer. We met the steamer "Illinois" a short distance below Grand Lake Landing, some fifteen or twenty minutes before the collision?

Libellant's seventeenth interrogatory. Have you any means of knowing who were on watch on the "Hill" at the time of the collision? State all you may know about it. Who were on the hurricane deck of the World?

Answer. I know nothing about who was on watch on the "Hill" at the time. Myself and the watchman were on the hurricane deck of the World at the time.

Libellant's eighteenth interrogatory. When you first saw the "Hill" on which side of your boat did her lights show? Did her lights show on your larboard or starboard?

Answer. When I first saw the "Hill" her lights showed her starboard side, and also on our larboard side.

Libellant's nineteenth interrogatory. At the moment of the collision, on which side of the direction in which the "World" lay did the "Hill" lie? Did she lie on your larboard or starboard? At the moment of collision, how did the "World" lie in the river, in what direction?

Answer. At the moment of the collision the "World" was laying straight down the river. The "Hill" came quartering out from the Princeton bar, and struck the "World" on the larboard quarter.

Libellant's twentieth interrogatory. After the collision, did the "Hill" come up to the "World" on the same side on which she was at the moment of collision, or did she back and come up on a different side? On which side of the "World" did she come up on, your larboard or starboard?

Answer. After the collision the "Hill" came up to the "World" on the starboard side. I don't know whether she backed or not. The boats had separated several yards, when I hailed the "Hill" to come along side, as we were sinking. The "Hill" put a plank to the boiler deck of the "World" for the passengers to escape on.

Libellant's twenty-first interrogatory. Immediately after the collision, or at any time between the moment of collision and the sinking of the "World" did you hear any person from the "Hill suggesting to the persons on the "World" to throw off freight, and throw a tarpaulin over the bow of the boat, and what answer was made? Did you hear any person from the "World" say, "he would be damned if he would, or any such answer?" State what answer was made, and who made it. BENJAMIN & FINNEY,
for Libellant.

Answer. Immediately after the collision, and after I had left the hurricane roof and got down on the main deck of the "World," some one on the "Hill" cried out, throw a tarpaulin over the bow, and I replied that it was no use, as there was a hole in the "World" as big as a barn door, and that she would sink in five minutes. I did not hear any one suggest to throw off freight. There was no one on the main deck when I got down that I saw but the watchman who went down with me and two or three deck hands, and I heard no reply whatever to the suggestion to throw a tarpaulin over her bows, but the one I made as above stated. There was not time enough between the time of the collision and the sinking to have thrown overboard any freight that would have done any good.

All just and legal exceptions reserved.

Respondent's first cross-interrogatory. Was it raining at the time of the collision? Was there a mist on the river? Could you see the stars?

Answer. At the time of the collision I think it was raining a little. I don't think that the stars could be seen. I think it was cloudy.

Respondent's second cross-interrogatory. How long have you been on the river? Are you sufficiently acquainted with the Mississippi River to tell exactly where you are in a dark night?

Answer. I have been on the river twenty-one years. I don't know the river well enough to always know where I am in a dark night. Some parts of the river I know where I am and some parts I don't. I knew where we were that night, from the fact that we had just passed Grand Lake landing a short distance before the collision.

Respondent's third cross-interrogatory. At what hour that morning did you change watch? Is it usual for the captain and mate both to be on watch at the same time, at the hour of four in the morning? How long after you came on did you meet the "Illinois?" Where did you meet her? How far from the point of collision?

Peter Bougher answers. I came on watch at one o'clock, it is not usual for the captain and mate both to be on watch at the same time, at four o'clock, nor was that the case that night. The captain was not on watch at that time. I saw him on the boiler deck just after the collision. I think we met the "Illinois" about three hours and

a quarter after I came on watch, and a short distance below Grand Lake Landing, and from four to five miles above the point where the collision occurred.

Respondent's fourth cross-interrogatory. How wide was the river from bank to bank at the point of collision? Was the Princeton bar a naked bar, or was it covered with timber? Same as to Arkansas bar.

Answer. I don't know the width of the river at this point, but I should judge it to be from a half to three-quarters of a mile wide. That part of the Princeton bar which was out of the water at the time was partly covered with willows. The Arkansas bar is naked.

Respondent's fifth cross-interrogatory. How far was it from the point of collision to timber or houses on the Princeton side? How far was it to timber on the Arkansas side? State what notable object was in sight on either side opposite the point of collision. Did you see that object? What distance was that object from the point of collision?

Answer. The nearest timber to the point of collision was at the foot of the Princeton bar on the main shore, and, perhaps, a half or three-quarters of a mile distant. I did not see any house on the Princeton side. The nearest timber on the Arkansas side was the main shore, and I don't know the distance to it. I don't recollect of seeing any particular object except what I have already described.

Respondent's sixth cross-interrogatory. How do you which shore you were nearest? Where is the down stream channel, and where is the up stream channel, say from the foot of Princeton bar to the point near Johnston's on the Arkansas shore? Where do the down stream boats cross to the Mississippi side? Where do the up stream boats cross to the Arkansas side?

Answer. I know that we were nearest the Princeton bar, and I know it from the fact that I was on the hurricane-roof of the "World" and could see both shores. I am not a pilot, and don't know anything about the channel there; or where the boats generally cross from one side of the river to the other.

Respondent's seventh cross-interrogatory. What was the length of the Princeton bar? Where did the willows begin on the bar? How far from the head of the bar, and how far from the foot of the bar, was a low place spoken of as a well-known locality by some of the witnesses?

Answer. I don't know the length of the Princeton bar, nor do I know what proportion of it is covered with willows. I just know that there are some willows on it. I don't know the distance from the foot of the bar, nor the low place spoken of.

Respondent's eighth cross-interrogatory. How far was it by the usual channel from Johnson's, on the Arkansas shore, to the foot of Princeton bar?

Answer. I don't know the distance called for by this interrogatory.

Respondent's ninth cross-interrogatory. How long after you came on watch did you meet the "Illinois?" Where did you meet the "Illinois," how far from the point of collision?

Answer. We met the "Illinois" about three hours and a quarter after I came on watch, a short distance below Grand Lake landing, and some four or five miles above where the collision occurred.

Respondent's tenth cross-interrogatory. Was the "Hill" between the "Western World" and the Arkansas shore, or between the "W. World" and the Mississippi shore when the first signal bell was rung? Was she between the "W. World" and the Arkansas shore, or between the "W. World" and the Mississippi shore at the moment of collision? How do you know which side she was on?

Answer. The "Hill" was on the larboard side of the "World" all the time after she came in sight until she struck the "World," or on the Mississippi side. I know the fact because I was on the hurricane of the "World" and saw the "Hill" all the time for several miles down the river to the moment she struck the "World."

Respondent's eleventh cross-interrogatory. Did the "Hill" strike the "Western World," or did the "Western World" strike the "Hill?" On which side, larboard or starboard, of each boat, respectively, was the blow given and received? What part of the "Hill" and what part of the "W. World" came in contact?

Answer. The "Hill" struck the "World" on the larboard side, and I think the "Hill" struck the "World" with her stem. The stem of the "Hill" and the larboard side of the World came in contact.

Respondent's twelfth cross-interrogatory. What speed per hour was the "W. World" making at the time of the collision, or just before? How long had she been going at about the same speed?

Answer. The "World" had been running about ten miles per hour nearly all night, but at the time of collision she was backing on both wheels, and her headway was quite run out.

Respondent's thirteenth cross-interrogatory. At the rate the "W. World" was going how long would it take to stop, ship up, and begin to back her engines, loaded as she was, and going as she was, how long would it take to check her headway and give her a backward motion? How far would she go down stream before she could be made to go up stream?

Answer. At the rate the "World" was going, the engines could have been stopped, shipped up, and commenced backing in the course of a minute, but she *had stopped* her engines some time before, and before the collision she had commenced backing. Going as she was, I do not know how long it would require to give her a backward motion; nor how far she could go before she would commence going up stream.

Respondent's fourteenth cross-interrogatory. How long did you remain on the "W. World" after the collision? What opportunity did

you have of knowing the injury she sustained? Did her jackstaff fall in the collision? Did the "Hill's" jackstaff fall?

Answer. I remained on the "World" perhaps five minutes after the collision, and I was the last man who left her, and got on the "Hill." I was on the hurricane roof at the time, and went down on the main deck of the "World," and looked to see what injury she had sustained. The jackstaff of the "World" was knocked down by the collision; I don't think the "Hill's" jackstaff fell.

Respondent's fifteenth cross-interrogatory. Give the names and capacity of the persons who were on the deck of the "Hill," or on watch at the time of collision. How long had you known each of them, and where, and how did you become acquainted with them?

Answer. I do not know who was on the deck or on watch on the "Hill" at the time; I saw no one on the hurricane of the "Hill," until after the collision.

Respondent's sixteenth cross-interrogatory. Where was the "Western World," and where was the "Hill," when you first saw the "Hill?" Were you above or below Johnson's on the Arkansas shore? Was the "Hill" above or below the foot of Princeton bar? State, how far you were above or below Johnson's, and how far the "Hill" was above or below the foot of Princeton bar, when you first saw the "Hill?" Did you see before or after your pilot saw her? What called your attention first to the "Hill," and caused you to observe her position? What induced you to observe exactly the position of the "Western World?"

Answer. I saw the light of the "Hill" about the time we met the "Illinois," a short distance below Grand Lake Landing. The "Hill" was then in the bend below the foot of Princeton bar. I do not know where Johnston's is; I don't know whether our pilot saw the "Hill" before I did, or not; I saw her lights, and was on watch at the time, and observed her all the time until the collision occurred; I don't know that there was anything particular that induced me to observe the position of the "World," except that I was on the boat and saw her and could not well avoid seeing her position.

Respondent's seventeenth cross-interrogatory. How far were the two boats apart, when the "Western World's" engines were stopped first? How far apart were they, when her engines began to back? How far was this from Johnston's on the Arkansas side? How long was it before the collision?

Answer. I don't know how far the two boats were apart when the "World's" engines were stopped, nor how far apart when the "World" began to back, but I should judge two or three lengths of the boat. I don't know where Johnston's is. It was a very short time after the "World's" engines were stopped before they came together.

Respondent's eighteenth cross-interrogatory. In a dark night, have you not been mistaken in your exact position on the river? Do not some of the banks and bars of the Mississippi River resemble

each other so much that, in a dark night, when there is nothing but the shape of the river to judge by, a pilot may mistake one point for another, or miss his reckoning, by several hundred yards?

Answer. In a dark night I have frequently been mistaken as to my position in the river; some of the bends and bars of the river resemble each other very much in the night. I don't know whether a *pilot* would mistake his position or not; I am not a pilot.

Respondent's 19th cross-interrogatory. What is the usual course of a down stream boat from the foot of Princeton bar? Where do they cross to the Arkansas side? How far below the foot of Princeton bar is the crossing?

Answer. Boats run the bend below Princeton bar on the Mississippi side some distance, and I don't know exactly where they cross to the Arkansas side.

Respondent's 20th cross-interrogatory. How long after the collision did the "Hill" come alongside of the "W. World?" Did she back or go ahead to reach the "W. World?" How long did she remain with the wreck? After leaving the wreck where did the "Hill" go ashore? What point was opposite the place where the "Hill" left the wreck? Did not the "Hill" go to the shore from the wreck and furnish the mate with a yawl or oars to follow the wreck? At what time did she get off again on her trip up the river?

Answer. It might have been from one to two or three minutes after the boats came together before the "Hill" came alongside of the "World;" she came ahead to reach the "World;" she probably remained with the wreck four or five minutes, it may be a little longer; after leaving the wreck the "Hill" went ashore; I don't know of any particular point opposite where the "Hill" left the wreck; the "Hill" did go ashore; I don't recollect that the "Hill" furnished us with oars; she did not furnish us a yawl; the "Hill" left before daylight.

Respondent's 21st cross-interrogatory. Have you conversed with Captain Norton, or with any friend or agent of his in reference to the testimony you were to give in this case? Are all the statements you have made in reference to the position of the two boats, and to the time, place, and circumstances of the collision, made from your own knowledge and recollection, or have you stated partly from your own knowledge and recollection and partly from impressions derived from conversation with some person or persons about the collision or about this suit?

Peter Bougher answers. I have conversed with Capt. Norton on several occasions about the circumstances of the collision, and with various other persons, but with no agent of his that I know of. All the facts that I have detailed in this examination are of my own knowledge and from my own recollection of the circumstances, and not from impressions derived from others in any manner.

Respondent's 22d cross-interrogatory. If in answer to libellant's interrogatory No. 3, you attempt to state how the collision happened

as far as you know and deem it material; you will also state now whatever facts and circumstances attending the collision you may have omitted. State all the facts and circumstances just as you witnessed them, whether you deem them material or not, and do not suppress anything which you suppose would prejudice the one party or the other.

(Signed) R. H. MARR,
Of Counsel for Respt.

Peter Bougher answers: I believe I have stated all the facts and circumstances attending the collision as far as I recollect them.

(Signed) PETER BOUGHER.

Subscribed and sworn to before me this 12 day of October, 1855.

(Signed) D. G. TUTTLE,
Commr. for La.

U. S. District Court, Eastern District of Louisiana.

ALEXR. NORTON, Owner Str. "Western World," vs. Steamer "H. R. W. HILL." } In Admiralty. No. 6853.

Deposition of *Geo. Wideman* taken under commission of Nov. 4th 1854, by David G. Tuttle, La. Commr., at St. Louis, Mo., on interrogatories and cross-interrogatories, and certified October 13th, 1855, and *read and offered in evidence for libellant, January 2d*, 1856.

Libellant's first interrogatory. Do you know the parties to this suit? where do you reside, and what is your occupation?

George Wideman answers. I know the parties to this suit; I reside in the city of St. Louis, Missouri; I follow the river sometimes as watchman and sometimes as a hand.

Libellant's second interrogatory. Were you on the "Western World" at the time of the collision between her and the "H. R. W. Hill?"

Answer. I was on the "Western World" at the time of the collision between her and the "H. R. W. Hill."

Libellant's third interrogatory. Were you or not on watch at the time? when did the collision occur? State the year, day and hour.

Answer. I was on watch at the time of the collision; it occurred near Princeton bar in the Mississippi River in the year 1852, December 14th, at about half past four o'clock in the morning.

Libellant's fourth interrogatory. Did you see the "Hill" at and before the time of collision? If yea, please tell how it happened as far as you know and deem it material; what course was pursued by the two boats, and what manœuvring done.

(Excepted to by respd'ts.)

Answer. I saw the "Hill" before and at the time of collision; I saw the lights of a boat that proved to be the "H. R. W. Hill,"

somewhere near Princeton bar, below the foot of the bar, on the Mississippi side of the river, when she was four or five miles distant; when we came within hailing distance, the large bell of the "Western World" was rung one tap, and was answered by the "Hill" with two taps; the engines of the "Western World" were immediately stopped, and both bells rang to back; the engines were immediately set to backing. The large bell was again rung one tap, and before it was answered, I think the "Hill" struck the "Western World" on her larboard bow near the stem, about four or five feet from the stem, and knocked in the bow, making a large hole; we were then near the willows of the Princeton bar, pointing up and down stream, with the headway about run out; I heard the engine bells of the "Hill" ring to stop her engines when she was within fifty or sixty feet of our bow; the starboard engine of the "Hill" had stopped just before she struck the "Western World;" the "Western World" was going straight down the river, say two hundred yards from Princeton bar; the "Hill" came out from the bar pointing towards the Arkansas point, when the boats came together.

Libellant's fifth interrogatory. Where did the collision occur, was it nearest the Princeton bar or the Arkansas bar; how far down the Princeton bar did it occur?

George Wideman answers. The collision occurred near the Princeton bar; I could see the willows on the bar; it was considerable distance to the Arkansas shore; we were near two-thirds the distance down the bar.

Libellant's sixth interrogatory. When you first saw the "Hill," where was she? which shore was she nearest? at that time, to which shore was the "Western World" nearest; how did the boats come together? did the "Hill" run out from the Princeton bar, or did the "World" run in nearer to that bar? Explain yourself fully.

Answer. The "Hill" was near the foot of Princeton bar, coming up the Mississippi side; the "Western World" was nearest the Arkansas shore or point above the head of the bar; the "Hill" struck the "World" near the bow on the larboard side; the "Hill" run out from the Princeton bar; the "World" was stopped and pointing down the river at the time.

Libellant's seventh interrogatory. If you say you saw the "Hill" coming up, where did you think she was going?

Answer. I saw her coming up the river, but did not think where she was going to.

Libellant's eighth interrogatory. Did the "Western World" make any effort to stop and back her engines? If yea, what was done in that respect? How many revolutions did she make in backing?

George Wideman answers. The "Western World's" engines were both backing when the "Hill" struck her; I can't say how many revolutions exactly, but enough I think to stop all headway.

Libellant's ninth interrogatory. Did, or not, the "Hill" back

both engines before the collision? Answer according to the best of your knowledge and belief.

Answer. I don't think the "Hill" backed an engine until after she struck the "World," as there was but one of the engines stopped when she struck the "World."

Libellant's tenth interrogatory. Were any signal bells exchanged between the two boats? If yea, which tapped first, and how was it answered? What was the first signal given? State all the facts in relation to the signal bells just as they occurred.

Answer. There were signal bells given; the "Western World" rang first one bell; the "Hill" answered it with two bells; the "World" was then stopped and set to backing, and the signal bell again rung once; I think the "Hill" struck the "World" before the second bell was answered.

No eleventh interrogatory or answer.

Libellant's twelfth interrogatory. Where was the "World" struck, and what was the damage done? Do you think it possible the "World" could have been saved from sinking after suffering the injury which the collision caused her?

Answer. The "Western World" was on the larboard side near the stem—say five to seven feet from the stem; the *hull* was much injured, as it was only about five minutes until water was on the main deck; I do not think it was possible to have saved the "Western World" after the injury was done.

Libellant's thirteenth interrogatory. State whether the "World" had any and what signal lights at the time of the collision, and how displayed?

Answer. The "Western World" had one large signal lamp, covered with red flannel; it was displayed about the centre of the boiler deck, forward, over head, hanging on a hook just under the edge of the roof, in a conspicuous place.

Libellant's fourteenth interrogatory. How was the "World" officered and manned and found at the time of the collision? What was her condition in respect to soundness and seaworthiness?

Answer. The "World" was well officered and manned, and had a good crew, I think, as there was on the river at the time, of sober good men; she was also in good order, sound, and seaworthy.

Libellant's fifteenth interrogatory. What kind of a night was it? was it or not too dark a night for boats to run? could you see the shores?

Answer. It was dark, but not too dark for boats to run. I could see both shores plainly.

Libellant's sixteenth interrogatory. Did you or not see any of the officers of the "World" drinking to excess or gambling, card playing on that trip? what was the general character of the officers of the "World" for temperance and knowledge of their business?

Answer. I did not see any card playing or drinking among the crew of the "World" that trip. The officers were not drinking men,

and there are no men on the river who have any better reputation for a knowledge of their business than they have where they are known.

Libellant's seventeenth interrogatory. How was the "Western World" loaded? Had she received any injury on that trip which caused her to leak or to require more than usual pumping?

Answer. The "World's" guards were clear of the water. She had not received any injury on that trip before the collision, and did not require more than usual watching or pumping.

Libellant's eighteenth interrogatory. Where did you pass the "Illinois," and how long before the collision?

Answer. I did not see the "Illinois," she must have been met while I was calling up some portion of the crew.

Libellant's nineteenth interrogatory. Have you any means of knowing who were on the hurricane deck of the "Hill" at the moment of the collision and just before the collision? State all you know on that subject. Who were on the hurricane deck of the "Western World" at the time of the collision?

Answer. I have no means of knowing who was on the hurricane deck of the "Hill" at the time and before the collision. I had been up on the roof of the "Western World" just before the collision—both pilots, the mate and watchman were then there.

Libellant's twentieth interrogatory. When you first saw the "Hill," on which side of the "World" did her lights show? did her lights show on your larboard or starboard?

Answer. When I first saw the "Hill" her lights were to the larboard or left of us.

Libellant's twenty-first interrogatory. At the moment of collision, on which side of the directions in which the "World" lay did the "Hill" lie for the greater part; did she lie more on your larboard or starboard?

Answer. At the moment of collision the "Hill" was on our larboard side, with her bow pointing to our larboard side near the bow.

Libellant's twenty-second interrogatory. After the collision did the "Hill" come up to your assistance on the same side in which she was at the moment of collision, or did she come up on a different side? On what side did she come up to your assistance, on your larboard or starboard?

Answer. After the collision the "Hill" backed her engines to free her from the "World's" bow, she then came up on the starboard side of the "World," and put off a plank to save the passengers and crew.

Libellant's twenty-third interrogatory. Between the moment of the collision and the sinking of the "World," did any one from the "Hill" direct that freight should be thrown from the "World," and a tarpaulin thrown over her bow? What answer was made and who made it? Did you hear any persons from the "World" say he

would be damned if he would, or make any answer like that or to that effect?

Answer. I heard a voice call from the "Hill" to throw freight overboard and to throw a tarpaulin over the bow, but did not hear any answer that he would be damned if he would; the "Western World" sunk before a tarpaulin could have been thrown over her bow.

Libellant's twenty-fourth interrogatory. State any other facts within your knowledge calculated to serve the plaintiff?

BENJAMIN & FINNEY, for Libt's.

Answer. I believe I have answered all the interrogatories and stated all the facts as far as I know, except I will add the fact, that the night of the collision, the engines of the "Western World" were not pushed; I know we had been running with the five doors open, and they were open at the time of the collision.

Respondent's Cross-Interrogatories.

Respondents reserving the benefit of all just and legal exceptions, whatsoever, to the interrogatories propounded to E. T. Thompson and George Wideman, especially excepting to all of said interrogatories as leading and suggestive, and to the fourth interrogatory, because it seeks to obtain merely such facts as the witness may deem material, nevertheless propound the following cross-interrogatories.

Respondent's 1st cross-interrogatory. What is your occupation? How long have you followed it? What is your age? Where do you reside, and how long have you resided there?

In answer the 1st cross-interrogatory George Wideman answers. My occupation is sometimes watchman, and sometimes hand on the river; I have been on the river as watchman and hand on steamboats about 8 years; my age is near twenty-one years; I reside in the city of St. Louis, State of Missouri, and have been living in St. Louis since the year 1845 and 1846, some eight or nine years.

Respondent's 2d cross interrogatory. In what capacity, and in whose employ were you on board the "Western World," at the time of the collision?

Answer. I was acting as second watchman on the steamboat "Western World," in the employ of the boat and owner at the time of the collision with the "H. R. W. Hill."

Respondent's 3d cross-interrogatory. At what hour did you come on watch previous to the collision? How long had you been on watch at the time of the collision?

Answer. I came on watch the evening previous to the collision at candlelight, and had been on watch some ten hours before the collision.

Respondent's 4th cross-interrogatory. Are you well acquainted with the Mississippi River? Can you in a dark night tell exactly in what part of the river you are? Are not pilots sometimes mistaken by some hundred yards or more in their exact position? Have

you not known pilots to mistake one bend or one bar for another? Is it not frequently the case that a man mistakes one place for another on the Mississippi in a dark night?

Answer. I am not very well acquainted with the Mississippi River; I cannot tell what part of the river I am of a dark night, unless my attention is directed to it for some particular purpose; I have no means of knowing how much pilots may mistake their position, nor whether they would make such a mistake as to take one bend or bar of the river for another; persons who are not pilots may mistake one place for another on the Mississippi River of a dark night.

Respondent's 5th cross-interrogatory. Do not pilots judge of their locality in a dark night by the shape of the river? Is there not great similarity in some of the bends and bars on the Mississippi River, as seen from a boat, and does it not require great skill and close observation to tell exactly where a boat is of a dark night?

Answer. I believe pilots tell their localities of a dark night by the shape of the bends and points; there is great similarity in some of the bends and bars to one at first sight, but the appearance is different after being seen frequently; it requires considerable skill and good judgment and acquaintance with the points on the river to tell exactly where a boat is of a dark night, unless the boat is landing at some noted point.

Respondent's 6th cross-interrogatory. What caused you to notice particularly the position of the "Western World" before the collision? In what part of the boat were you, who was with you, and what were you doing?

Answer. I noticed the position of the "Western World" particularly because I saw the lights of the "Hill;" I was on the bow or forecastle, near the steps; two of the hands were near me; I was not doing any thing at the time.

Respondent's 7th cross-interrogatory. Where were you, who was with you, and what were you doing at the moment of the collision? Did your duties in your capacity require your attention, or had you time to look out and watch the manœuvring of the "Hill," and to take such observations as enabled you to know where you were, what course you were running, and which shore you were nearest?

Answer. I was on the forecastle near the steps, not doing anything; two of the hands were near me; my attention to my duties were not required just then; I had called up the watch some time before; I had time to look and see what the boats were doing, particularly the "Hill," and also to see and observe what shore we were nearest to.

Respondent's 8th cross-interrogatory. What did you see on the Mississippi shore that enabled you to know your exact position? How far were you from the Princeton bar? How wide was the river? How far were you from any trees or houses on the Mississippi shore? How far from trees or houses on the Arkansas shore?

What notable object was there on either shore, in sight, and which you saw at the time of or just before the collision?

Answer. I saw the Princeton bar, and trees on shore on the Mississippi side; we were about two hundred yards from the Princeton bar; from the Princeton bar to the Arkansas shore I suppose is over half a mile; we were some distance from trees or houses. I cannot say how far from either the Mississippi or Arkansas side; I could see the trees; the Princeton bar was the most notable object at the time and just before the collision.

Respondent's 9th cross-interrogatory. How long before the collision did you see the "Hill?" State exactly or as near as you can, where the "Western World" was, and where the "Hill" was when you first saw the "Hill?"

Answer. When I first saw the "Hill" we were four or five miles apart; the "Hill" below and near Princeton bar, coming up; the "Western World" was above the bar near the Arkansas point, before going out near the Princeton bar; I do not know how long it was before the collision. I have no means of telling the exact time.

Respondent's 10th cross-interrogatory. How long before the collision did you meet the "Illinois?" What distance was she above or below Johnson's on the Arkansas shore? How far was it from the point of collision? Be as accurate as you can in your statement.

Answer. I was not out when we met the "Illinois," and did not see her; do not know whether she was above or below Johnson's, nor how far it was from the point of collision.

Respondent's 11th cross-interrogatory. How long was the Princeton bar at the time of collision? Where was the down stream channel at that time? How far was it from the Princeton bar? How did up stream boats run that part of the river, say from the foot of Princeton bar to the point on the Arkansas side, where you met the "Illinois?"

Answer. I think the Princeton bar was some three or four miles long. I don't know exactly where the down stream channel was, nor how far the channel was from Princeton bar; I do not know how the up stream boats run at that time.

Respondent's 12th cross-interrogatory. How long was the "Western World"? had she not been made longer after her first or second season? how much longer? how was she made longer? how much was her tonnage increased by her increased length?

Answer. I was not acquainted with the "Western World's" dimensions, and do not know how she was altered, nor how much longer she was made, and don't know how much more her tonnage was increased.

Respondent's 13th cross-interrogatory. Was the "Western World" of great power for her original tonnage? was she very fast before she was made longer? what effect on her speed and handling resulted from her increased length? did she run faster or slower? was she easier or harder to handle after she was made longer?

Answer. The "Western World" was a boat of considerable power for one of her class at the time of the collision. I do not know what effect the alterations had on her; never heard of any complaint of her handling or steering.

Respondent's 14th cross-interrogatory. How was the "Western World" running just before the collision? how many miles an hour was she making?

Answer. The "Western World" was running some ten or twelve miles an hour before the collision. The river was high, and a heavy current.

Respondent's 15th cross-interrogatory. At the rate the "World" was running, how long would it take to stop, ship up, and begin to back her engines? Loaded as she was, and running as she was, how long would it take to check her headway, and to give her a backward motion? How far down stream would she go before she would begin to move up stream?

Answer. I think the engines could be stopped and set to backing in one minute; I think some five or six minutes would stop her headway, and begin to give her a backward movement. She would probably begin to go back in some three or four hundred feet.

Respondent's 16th cross-interrogatory. How was the "W. World" loaded? was she more by the head or by the stern? does a boat steer easier heavily laden or moderately? by the head or by the stern?

Answer. The "Western World" was probably six inches by the head. Her guards were clear of the water. A boat steers best a little by the head, or on an even keel.

Respondent's 17th cross-interrogatory. What part of the "Western World" and what part of the "Hill" came in contact? which side of the one boat and which side of the other? what injury did the "Hill" receive? did her jackstaff fall? did the jackstaff of the "W. World" fall? was the "Hill" between the "W. World" and the Mississippi shore, or between the "W. World" and the Arkansas shore?

Answer. The larboard of the "Western World" from five to seven feet from the stem, and the stem of the "H. R. W. Hill" were the points that came together. Nothing more than the stem and stem band of the "Hill" were injured; her jackstaff did not fall; I do not think the jackstaff of the "World" fell at the moment of the collision; I think it fell when the "Hill" came alongside; the "Hill" was between the "Western World" and the Mississippi shore at the time of the collision.

Respondent's 18th cross-interrogatory. How long did you remain on board the "Western World" after the collision? how long after the collision did she turn over? what opportunity had you of knowing where the "Western World" was injured?

Answer. I remained on the "Western World" probably ten or twelve minutes after the collision; I was one of the last persons to

leave the wreck; about fifteen minutes after the collision, the "World" turned bottom up; I saw the "Hill" and the "World's" larboard bow come together.

Respondent's 19th cross-interrogatory. How long after the collision did the "Hill" come to your assistance? Did she back or go ahead in order to reach you? How long did she remain with the wreck? At what point did she leave the wreck?

Answer. The "Hill" came alongside the "World" in from five to eight minutes, and remained there until the "World" turned bottom up. The "Hill" was then loose. The "Hill" backed her engines first, and then came ahead to get alongside of the wreck. The backing was to free the bow. The "Hill was alongside the wreck some ten minutes.

Respondent's 20th cross-interrogatory. How far were the two boats apart when the "Western World's" engines stopped first? How long before the collision?

Answer. The boats were some four hundred yards apart when the "World's engines were stopped first. It was some little time after that before the collision. I cannot say how many minutes.

Respondent's 21st cross-interrogatory. Suppose you were told that two boats had come in collision; that the stem of the descending boat was knocked out "plump and smooth;" that the ascending boat had her stem band of heavy iron bent over to the larboard, and the starboard side of her stem split through to the plank ends on the larboard side, and some pieces of wood, supposed to be the hood ends of the descending boat, wedged in the split on the starboard side; how would you say the two boats came together? Which boat would you say struck the other, on which side?

Answer. I do not know what I might say of such a supposed collision when I had not seen any part of the supposed accident. I should have to think some time to give an opinion.

Respondent's 22d cross-interrogatory. Is it possible for the stem of a boat to be knocked out "plump and smooth" in a collision with another boat otherwise than by striking that other boat stem on? If it can be done otherwise, say how it can be done.

Answer. If two boats were to strike each other stem and stem, they would both or the weaker one crush in; but one boat could strike another some feet from the stem, and the pressure of the broken timber between her bow and the stem would shove the stem out; I think that is the only way the stem could be knocked out, unless the strongest boat would cut the weaker boat's bows clear off.

Respondent's 23d cross-interrogatory. Can the stem band of a boat be bent over from the starboard to the larboard side, and the stem split on the starboard side through to the plank ends of the larboard side, in a collision with another boat, otherwise than by being struck by that other boat on the starboard side of the stem? If it can be done otherwise, say how.

Answer. Where boats come in contact, the stem would naturally

be pressed to one side, if the obstruction was greater on one side than the other, such as striking against heavy breastworks, or a shaft, or cylinder timbers on one side; this would be the case as much as if boats were to meet in any other way.

Respondent's 24th cross-interrogatory. Did you go up on the "Hill" after the collision? Did you see any of the officers of the "W. World" drinking and gambling? If you did, say which of them.

Answer. I did not go up on the "Hill" after the collision as far as Cairo. I saw some of the officers of the "Western World" playing cards, and I think I saw them drink, but not to excess. I did not see them intoxicated. I saw Mr. Fletcher, Mr. Bloss, Mr. Curtiss, and Mr. Murphy play cards principally for amusement. There was very little money passed between them.

Respondent's 25th cross-interrogatory. Were you well acquainted with the officers of the "Hill?" name those who were on the deck of the "Hill," and who were on watch at the time of the collision; state how long you had know each of them, and how and where you became acquainted with them.

Answer. I was not acquainted with the officers of the "Hill;" I do not know who was on deck nor on watch; at the time of the collision the officers of the "Hill" were all strangers to me.

Respondent's 26th cross-interrogatory. Have you any interest in this suit; will you gain anything by Capt. Norton's success, or lose anything by his failure in the suit; are you related to Capt. Norton; have you any interest in showing that the "Hill" was at fault in this collision?

Answer. I have no interest in this suit; I will not gain anything by Capt. Norton's success, nor lose anything by his failure in this suit; I am not related to Capt. Norton in any way that I know of; I have no interest in showing that the "Hill" was at fault in this collision.

Respondent's 27th cross-interrogatory. Have you corresponded or conversed with Capt. Norton, or any agent or friend of his, in reference to the testimony you were to give in this case; are all the statements which you made as to the time, place, and circumstances of the collision, made from your own knowledge and recollection, or have you stated partly from your own knowledge and recollection, and partly from impressions derived from conversations or correspondence with some person or persons about the collision, or about this suit; have you stated all the facts just as you witnessed them?

Answer. I have not had any correspondence or conversation with any one, except Captain Norton, and only with him when asked to give my deposition; all statements made by me are from my own knowledge; I have not had any correspondence or conversation with any parties directly or indirectly interested in this suit, and have stated from my own knowledge only.

Respondent's 28th cross-interrogatory. If, in answer to the 24th interrogatory, you state any fact about which you have not been in-

terrogated, state also all you may know calculated to exonerate the "Hill?" (Signed) R. H. MARR,
Of counsel for resp'd'ts.

I believe I have not omitted answering interrogatory in full as far as I know any facts.
(Signed) GEORGE WIDEMAN.

Subscribed and sworn to before me this 13th day of October, 1855.
(Signed) D. C. TUTTLE,
Comm'r for La.

(E. T. Thompson not found.)
(Signed) D. C. TUTTLE,
Comm'r for Louisiana.

S. P. Symond's Deposition.

Interrogatories to be answered by S. P. Simonds, a witness for libellant, residing in St. Louis, in the State of Missouri.

Libellant's 1st interrogatory. Do you know the parties to this suit; where do you reside, and what is your occupation?

J. P. Symonds, answering says. I know the parties to this suit; I reside in the city of St. Louis, Missouri; I have been a merchant here in St. Louis, but during the last few years have been on the river as barkeeper.

Libellant's 2d interrogatory. Were you on the "Western World" at the time of the collision between her and the "H. R. W. Hill," in which the former boat was sunk; in what capacity were you on the "Western World?"

Answer. I was on the "Western World" at the time of the collision with the "Hill;" I was barkeeper.

Libellant's 3d interrogatory. Did you or not see the "H. R. W. Hill" before the two boats came together? When you first saw the "Hill," where were you standing? Please state particularly on what part of the "W. World" you were standing. Where and what were you doing?

Answer. I did not see the "H. R. W. Hill" before the boats came together. When I first saw the "Hill" I was standing on the larboard guard up stairs. I was looking at the "Hill." I was standing on the larboard guard near the gangway leading into the cabin.

Libellant's 4th interrogatory. How far from the "Western World" was the "H. R. W. Hill" when you first saw her? On which side of the "Western World" did the lights of the "H. R. W. Hill" show when you first saw her? When you first saw the "Hill" was she nearest the Princeton bar or the Arkansas bar?

Answer. When I first saw the "Hill," she had just struck our larboard bow; when I first saw the lights of the "Hill" they were on the larboard side of the "World." When I first saw the "Hill" she was near the Princeton bar.

Libellant's 5th interrogatory. Had you been lying down or asleep that night? If yea, what caused you to get up?

Answer. I had been lying down and asleep that night. I was unwell that night and had been up shortly before the collision.

Libellant's 6th interrogatory. At the time you first saw the "H. R. W. Hill" where was the "Western World?" State in what part of the river as accurately as you can. After you first saw the "Hill" in what direction did she approach the "Western World?" Did she approach you on your larboard or starboard?

Answer. When I first saw the "H. R. W. Hill," the "Western World" was going down the river, near Princeton bar, with the bow of the "Hill" against the larboard side near the stem of the "Western World." The "Hill" approached and struck on the larboard side of the "Western World."

Libellant's 7th interrogatory. Were there or not any signal bells exchanged between the two boats? Which rang the first signal bell, and what was the signal? Was it replied to, and how? State all that happened with regard to the signal bells just as the facts transpired. Where were you at the time the first signal bell was rung? Had you or not seen the "H. R. W. Hill" when the first signal bell was rung?

Answer. I do not recollect of hearing but one signal bell; that was the "Western World's." I was in my room at the time.

Libellant's 8th interrogatory. How did the boats come together? What part of the "Western World" received the blow, and what part of the "Hill" received the blow? When the two came together, on which side of the direction in which the "World" lay, was the "Hill" lying? At the moment of contact, was she more on your larboard or starboard? At the moment of contact, in what direction did the "World" lie?

Answer. I do not know exactly how the boats came to strike together. The "Western World" received the blow on her larboard bow near the stem. The "Hill" received the blow on her stem. The "Hill" was lying on the larboard of the "World" when the two came together. At the moment of contact, the "Hill" was on the larboard side of the "World." At the moment of contact, the "Western World" was out in the river, opposite Princeton bar, pointing with her bow down stream.

Libellant's 9th interrogatory. After the collision, did the "Hill" come up to the assistance of the "World" on the same side of her on which she first struck her? On which side of the "World" did the "Hill" come up to her assistance after the collision?

Answer. After the collision, the "Hill" came up on the starboard side. She had struck the "World" on the larboard side.

Libellant's 10th interrogatory. Before the collision, did the "Western World" stop or back her engines? Please tell if either of these things was done, when they were done. State all particulars within your knowledge with regard to stopping and backing the

engines on the "World." Do you know or have you any reason to believe that the headway of the "Western World" was exhausted before the collision? If yea, state all you may know in relation to that matter?

Answer. I heard the bells of the "Western World" ring to stop the engines; I heard them immediately ring to back; I also heard the pilot, Mr. Fletcher, say, back her hard. This was before the collision; I think the engines of the "Western World" had made as many revolutions back as would about stop her headway before the "Hill" struck her.

Libellant's 11th interrogatory. Can you state, whether or not the "Hill" backed on both engines before the collision?

Answer. I do not know whether the "Hill" stopped or backed.

Libellant's 12th interrogatory. What kind of a night was it? Was it, or not, too dark to run?

Answer. It was a dark night, but not too dark to run.

Libellant's 13th interrogatory. When you first saw the "Hill" coming up, where was she, and where did you think she was going? In what part of the river did the collision occur? Locate the collision as well as you can.

Answer. When I first saw the "Hill," she was touching the "Western World." I did not think where she was going to. The collision occurred in the Mississippi River near the Princeton bar.

Libellant's 14th interrogatory. How did the boats lie after the collision? How did their bows point?

Answer. After the collision, when the "Hill" came alongside of the "World," their bows were pointing nearly fair up and down the river.

Libellant's 15th interrogatory. How far from the Princeton bar did the collision occur? Nearest what part of the bar did it occur, the upper, the lower part, or the middle?

Answer. The collision occurred about two hundred yards from the Princeton bar, nearest the middle of the bar.

Libellant's 16th interrogatory. Did you hear any conversation among the pilots on the "Hill" about the boats coming together; if yea, what?

Answer. I did not hear the pilot of the "Hill" say anything about the boats coming together.

Libellant's 17th interrogatory. Was there, or not, any card playing among the officers of the "World" on that trip? Did you, or not, ever see any of the officers of the "World" playing cards on her while engaged making a voyage?

Answer. There was not any card playing on the "Western World" that trip among the officers; I never *saw* any of the officers of the "W. World," who were on board, at the time of the collision, engaged in playing cards when making a voyage.

Libellant's 18th interrogatory. Were any of the officers of the "Western World" drunk, or drinking that night? What were the habits of Mr. Winslow Fletcher, the pilot of the "World," with

respect to temperance? Is he, or has he, ever been an intemperate man to your knowledge? State all you know with regard to his habits in this respect.

Answer. None of the officers were drunk on the night of the collision; none of them were drinking men; I was the barkeeper, and know that fact; I know Mr. Winslow Fletcher to be a temperate man in all respects. He was and is a man of superior judgment in his business; I never knew him to be intemperate in eating or drinking; I never saw him intoxicated.

Libellant's 19th interrogatory. State any other fact within your knowledge calculated to be of service to the libellant, Alex. Norton, in this cause.

(Signed) BENJAMIN & FINNEY,
For Libellants.

Answer. I cannot think of any fact just now in addition to what I have stated in answer to the former question, except that, from the time the "Hill" landed on our starboard side until she separated from the wreck, the engines were not worked; and that it required but very few revolutions of her (the "Hill's") engines to land her on the Mississippi shore below the foot of Princeton bar. The distance, from where the "Hill" left the wreck to the shore could not have been more than two hundred yards.

To J. P. Symonds, witness:

Respondent's cross-interrogatories.

Respondents reserving the benefit of all just and legal exceptions whatsoever to the interrogatories propounded to J. P. Simonds, specially excepting to said interrogatories that they are leading and suggestive, nevertheless propound the following cross-interrogatories:—

1st cross-interrogatory for respondents. How long had you been on watch when the collision occurred? At what hour was the watch changed?

Answer. I had not been on watch; I don't know at what hour the watch was changed.

Respondent's 2d cross-interrogatory. Are you well acquainted with the Mississippi River? What is your age, and how long have you been on the river? Can you, in a dark night, tell exactly in what part of the river you are?

Answer. I am not well acquainted with the Mississippi River. I am now forty-nine years of age. I have been on the river occasionally for the last five years. I would not know exactly of a dark night what part of the river I was in unless my attention was directed to some object or for some purpose.

Respondent's 3d cross-interrogatory. Was it raining at the time of the collision? Did you see any stars? Was there any mist on the river?

Answer. It was not raining at the time of the collision; it was cloudy. I did not notice any stars. I do not recollect of seeing any mist at the time of collision. It rained hard shortly after the collision.

Respondent's 4th cross-interrogatory. How wide was the river from bank to bank at the point of collision? Was the Princeton bar a naked bar, or was it covered with timber? Was the Arkansas bar naked, or was it covered with timber?

Answer. The river between the Princeton and Arkansas bar is probably three-fourths of a mile wide. There are no trees on either of the bars.

Respondent's 5th cross-interrogatory. How far was it from the point of collision to timber or houses on the Princeton side? How far was it to timber on the Arkansas side? State what notable object was in sight on either shore opposite the point of collision. Did you see that object? What distance was that object from the point of collision?

Answer. I am not able to say how far it is to houses or timber on the Princeton side. I am not able to say how far it is to timber on the Arkansas side. The Princeton bar was the most notable object opposite or near the point of collision. I saw the Princeton bar. I should judge it was about two hundred and fifty yards from the point of collision.

Respondent's 6th cross-interrogatory. How do you know which shore you were nearest? What distance from each shore were you? Where is the down stream channel, and where is the up stream channel, say from the foot of Princeton bar to the point near Johnson's on the Arkansas shore? Where do the down stream boats cross to the Mississippi side? Where do the up stream boats cross to the Arkansas side?

Answer. I saw the Princeton bar, we were nearest that side. After the collision the boats floated down the river, and the "Hill" came in to the Mississippi shore just below the Princeton bar. I am not well enough acquainted with the river to say where the down stream channel was at the time, nor where the up stream channel was, nor where the boats crossed to the Mississippi or Arkansas side.

Respondent's 7th cross-interrogatory. What was the length of Princeton bar? Where did the willows begin on the bar? How far from the head of the bar, and how far from the foot of the bar, was a low place spoken of as a well-known locality by some of the witnesses?

Answer. I know the Princeton bar, but I do not know how long it is. I do not know exactly where the low place spoken of is. I do not know how far it is from the foot nor how far it is from the head of the bar.

Respondent's 8th cross-interrogatory. How far was it by the usual channel from Johnson's, on the Arkansas side to the foot of Princeton bar?

Answer. I do not know how far it is by the usual channel from Johnson's, on the Arkansas side, to the foot of Princeton bar.

Respondent's 9th cross-interrogatory. At what time, that is, how long after you came on watch did you meet the "Illinois?" Where did you meet the "Illinois?" How far from the point of collision?

Answer. I was not on watch. I did not see the "Illinois." I was not up when we met the "Illinois."

Respondent's 10th cross-interrogatory. Was the "Hill" between the "W. World" and the Arkansas shore, or between the "Western World" and the Mississippi shore when the first signal bell was rung? Was she between the "W. World" and the Arkansas shore, or between the "W. World" and Mississippi shore, at the moment of collision? How do you know which side she was on?

Answer. I was not up when the first signal bell was rung, and do not know where the "Hill" was at that time. The "Hill" was between the "World" and the Mississippi shore at the moment of collision. I saw her on the larboard side of the "World," and between her and the Princeton bar.

Respondent's 11th cross-interrogatory. Did the "Hill" strike the "W. World," or the "W. World" strike the Hill?"

Answer. The "Hill" struck the Western World."

Respondent's 12th cross-interrogatory. What speed per hour was the "W. World" making at the time of collision, or just before? How long had she been going at about the same speed?

Answer. I was not up and do not know how many miles per hour the "World" was running before the collision, but at the time of collision her headway must have been run out.

Respondent's 13th cross-interrogatory. At the rate the "W. World" was going, how long would it take to stop, ship up, and begin to back her engines? Loaded as she was, and going as she was, how long would it take to check her headway and to give her a backward motion? How far would she go down stream before she could be made to go up stream?

Answer. I was not up before the collision, and do not know how long it would take to stop and back and give her a backward motion.

Respondent's 14th cross-interrogatory. How long did you remain on board the "World" after the collision? What opportunity had you of knowing the injury she sustained? Did her jackstaff fall in the collision? Did the "Hill's" jackstaff fall?

Answer. I remained on board the "World" about ten minutes after the collision. I heard the crash at the moment of collision, and saw the "Hill" release herself from our larboard bow. The "World's" jackstaff fell, the "Hill's" did not fall.

Respondent's 15th cross-interrogatory. Give the names and capacity of the persons who were on the deck of the "Hill" on watch at the time of collision. How long had you known each of them, and how and where did you become acquainted with them?

Answer. I did not know any of the officers on watch on the "Hill" at the time of the collision. Did not know their names nor capacity.

Respondent's 16th cross-interrogatory. Where was the "Western World," and where was the "Hill," when you first saw the "Hill?" Were you above or below Johnson's, on the Arkansas shore? Was the "Hill" above or below the foot of Princeton bar? State how far you were above or below Johnson's, and how far the "Hill" was above or below the foot of Princeton bar when you first saw the "Hill," what called your attention first to the "Hill" and caused you to observe her position, and what induced you to observe exactly the position of the "Western World?"

Answer. When I first saw the "Hill" the two boats were touching each other. The "Western World" was out in the river opposite Princeton bar, and the "Hill" was on our larboard side, between the "Western World" and the Princeton bar. I do not know where Johnson's is on the Arkansas side. The "Hill" was above the foot of Princeton bar. My attention was called to the position of the boats by hearing Mr. Fletcher, our pilot, call to the engineer through the trumpet (which went down through my room) to back her hard, or she would run into us, meaning, I suppose, the "Hill." That brought me out.

Respondent's 17th cross-interrogatory. How far were the two boats apart when the "World's" engines were stopped first? How far was this from Johnson's on the Arkansas shore? How long was it before the collision?

Answer. I do not know how far the boats were apart when the "World's" engines stopped. I do not know how far it was from Johnson's on the Arkansas shore; I do not know how long it was before the collision.

Respondent's 18th cross-interrogatory. In a dark night, have you not known pilots mistaken in their exact position? Do not some of the bends and bars of the Mississippi River resemble each other so much, that in a dark night when there is nothing but the shape of the river to judge by, a pilot may mistake one point for another, or miss his reckoning by several hundred yards?

Answer. My duties on board of a boat did not require me to be out of a dark night. I have not known pilots to mistake one bend or bar for another on boats where I was employed. I do not know that the bars resemble each other so much that they would mislead a good pilot of a dark night.

Respondent's 19th cross-interrogatory. What is the usual course of a down stream boat from the foot of Princeton bar? Where do they cross to the Arkansas shore? How far below the foot of Princeton bar is the crossing?

Answer. I am not well enough acquainted with the Mississippi River to say what is the course of a down stream boat from the foot

of Princeton bar, nor where the boats cross to the Arkansas side. I do not know how far it is below Princeton bar to the crossing.

Respondent's 20th cross-interrogatory. Suppose you were told that two boats had come in collision, that the stem of the descending boat was knocked out "plump and smooth;" that the ascending boat had her stem band of heavy iron bent over to the larboard, and the starboard side of her stem split through to the plank ends on the larboard side; and some pieces of wood, supposed to be the wood ends of the descending boat, wedged in the split on the starboard side, how would you say the two boats had come together? Which boat would you say struck the other, and on which side of each would you say the blow was given and received?

Answer. I scarcely know how to answer question No. 20. It would require me to *imagine* considerable to give an opinion. I do not know which boat I should say or think struck the other.

Respondent's 21st cross-interrogatory. Is it possible for the stem of a boat to be knocked plump and smooth in a collision with another boat otherwise than by striking that other boat stem on? If it can be done otherwise, say how.

Answer. I do not think it possible for the stem of a boat to be knocked out smooth by striking each other stem and stem; I think the only way a boat could have her stem knocked out would be where one boat would strike another on the side near the stem.

Respondent's 22d cross-interrogatory. Can the stem band of a boat be bent over to the larboard side, and the stem split on the starboard side through to the plank ends in the larboard side, in a collision with another boat, otherwise than by being by that other boat on the starboard side of the stem? If it can be done otherwise, say how.

Answer. The stem band and stem of a boat could be shoved and bent to one side by running into another boat and meeting a greater obstruction on one side than the other; it could be done in this way just as easy as if they were to come together stem on.

Respondent's 23d cross-interrogatory. If you say you heard any conversation among the pilots on the "Hill" about the boats coming together, state exactly what the conversation was. How did it occur? Who was present? Who did the talking? State particularly when this conversation occurred, in what part of the boat it was, who beside yourself heard it, and how the pilots happened to be talking in your presence on the subject. State also as exactly as you can what each person said in that conversation.

Answer. I did not hear any conversation among the pilots of the "H. R. W. Hill;" do not know what conversation passed between them.

Respondent's 24th cross-interrogatory. Have you any interest in this suit? Will you gain anything by Capt. Norton's success or lose anything by his failure in this suit? Have you any interest in

showing that the "Hill" was at fault in this collision? Are you related to Capt. Norton?

Answer. I have no interest in this suit; I will not gain or lose anything by the failure or success of Capt. Norton in this suit; I have no interest in showing that the "Hill" was at fault; I am not in any way related to Capt. Norton.

Respondent's 25th cross-interrogatory. Have you conversed with Capt. Norton, or with any agent or friend of his, in reference to the testimony you were to give in this case? Are all the statements which you have made in relation to the position of the two boats, to the time, place, and circumstances of the collision, made from your own knowledge and recollection, or have you stated partly from your own knowledge and recollection and partly from impressions which you have derived from conversations with some person or persons about the collision, or about this suit?

Answer. What I have stated is from my own knowledge, not from the recollection of others; I have conversed with Capt. Norton, but only to tell him how the collision occurred, as he was not on board of the "Western World" at the time of the accident; I have never stated to Capt. Norton, or any other person, what my testimony would be in this suit.

Respondent's 26th cross-interrogatory. How long after the collision did the "Hill" come alongside of the "Western World?" Did she back or go ahead to reach the "Western World?" How long did she remain with the wreck? After leaving the "World," where did the "Hill" go ashore? What point was opposite the place where the "Hill" left the wreck? At what hour did the "Hill" get off again on her trip up the river?

Answer. It was not over five minutes from the moment of collision until the "Hill" came alongside; the "Hill" backed first and then came ahead to reach the "World;" the "Hill" remained with the "World" probably ten minutes, or near that time; after leaving the wreck, the "Hill" landed on the Mississippi side, below the foot of Princeton bar; I think the "Hill" separated from the wreck just below the foot of Princeton bar, for it only required very few revolutions of the "Hill's" engines to bring her into shore; the "Hill" started on her trip up the river near half past 5 o'clock; it was just before day-light when she started.

Respondent's 27th cross-interrogatory. If, in answer to libellant's interrogatory No. 19, you attempt to state any fact about which you have not been interrogated, you will state only what you witnessed and know to be true, and you will also state now any fact, if such there be within your knowledge, calculated to exonerate the "Hill?"

(Signed) R. H. MARR,
Of Counsel for Respdt's.

Answer. I did not state anything in answer to libellant's question No. 19, except what I witnessed and know to be the fact. I do not

know of anything I have omitted in answer to former questions in any way calculated to exonerate the "Hill."

(Signed) J. P. SYMONDS.

Sworn to and subscribed before me this 15th day of October, 1855.

(Signed) D. C. TUTTLE,
Commr. for La.

U. S. District Court, East. Dist. of Louisiana.

ALEX. NORTON, owner of Steamer "Western World," vs. Steamer "H. R. W. HILL." } No. 6853.

Deposition of G. W. Sparhawk, taken at St. Louis, Mo., under commission of November 4th, 1854, by D. G. Tuttle, on interrogatories and cross-interrogatories, and certified 20th November, 1855, read and offered in evidence for libt. January 2d, 1856.

Libellant's 1st interrogatory. Do you know the parties to this suit? Where do you reside, and what is your occupation? How long have you pursued that occupation? What is your age?

Answer. I know Capt. Alex. Norton, and also that there is such a boat as the "H. R. W. Hill," but I don't know who owns her. I reside in St. Louis, Missouri, and am by occupation inspector of steamboats for insurance companies, and have been engaged as such for the last 15 years. My age is fifty-six.

Libellant's 2d interrogatory. Do you know anything about the soundness and seaworthiness of the Str. "Western World" at and before she was sunk on or about the 14th December, 1852? State anything you may know about the soundness and seaworthiness of the "Western World" at and before the time she was sunk as aforesaid, and state your means of knowledge. State any facts within your knowledge tending to shed light on the question of her soundness or unsoundness, seaworthiness or unseaworthiness, at the time of her loss aforesaid.

(Signed) BENJAMIN & FINNEY, for Libellant.

Answer. On the 21st of August, 1852, I examined the steamboat "Western World" very carefully, with the dunnage entirely up and on deck. I examined her almost timber by timber, and I could find no defect in either her floor timbers, side timbers, or plank. She was at that time undergoing the usual laying up repairs, such as caulking sides from light water up to her guards and main deck, and repairing noosenis. She was at that time sound, tight, and seaworthy, and classed as an "A No. 1" boat on the books of the several insurance companies in this city. I saw her every trip that she came in port from the time that I examined her until she was lost, and she remained in the same good condition as above stated until she was lost.

Exceptions reserved.

Respondent's 1st cross-interrogatory. Are you interested in any way in the result of this suit, or related to Capt. Norton, the libellant?

Answer. I am not interested in the result of this suit, nor am I related to Capt. Norton.

Respondent's 2d cross-interrogatory. When was the "Western World" built? How long did she run before she was made longer? How much was her length increased? How much was her tonnage increased?

Answer. I believe her hull was built in the neighborhood Pittsburg in February, 1848. She was lengthened in November, 1850, sixty feet, and her tonnage was increased by lengthening from 338 tons to 533 tons, custom-house measure.

Respondent's 3d cross-interrogatory. How was she made longer? were not the same bow and forward timbers retained?

Answer. She was made longer by separating the hull about the after end of the boilers, and taking off the plank from butt to butt, and filling in the sixty feet with new timbers and planks. The *main clamp* covering the new portion extended one hundred and fifty feet, and was four and a half feet in depth, and well secured with bolts. The same bow and forward timbers were retained.

Respondent's 4th cross-interrogatory. When the "Western World" was built, did she have more power than was suitable for her size? Was there any addition to her power after she was made longer? if so, what?

Answer. The power of the "Western World" when she was built was four boilers and two cylinders, 25½ inches in diameter, and eight feet stroke.

There was no addition to her power when she was made longer.

Respondent's 5th cross-interrogatory. What is the effect, so far as the running and handling of a boat are concerned, of increasing her length and retaining the same power, granting that her power originally was not too great for her size? Will she be easier or harder to handle? will her speed be greater or less than originally?

Answer. Increasing the length of a boat will frequently cause her both to run and handle better than she did before.

Respondent's 6th cross-interrogatory. How long before the loss of the "Western World" did you examine her to ascertain her soundness and seaworthiness? did you find all her timbers entirely sound? was there no decayed timber in her bow? Please state whether the examination you made was general, or whether it was so minute as to enable you to say positively what was the condition of all the timbers and all the different parts of the boats.

(Signed) R. H. MARR,
Of Counsel for Respond'ts.

Answer. I examined her on the 21st August, 1852; I made a very careful examination, and found her sound in every particular,

and in good condition for the New Orleans trade; there were no timbers or planks about her bow decayed; on the contrary, they were all sound; the examination was a general, and particular, and thorough one.

(Signed) GEO. W. SPARHAWK.

Subscribed and sworn to before me this 13th day of November, 1855. (Signed) D. C. TUTTLE, Comm'r for La.

Interrogatories propounded to N. S. Eaton, Witness for Libellant.

(Deposition of N. S. Eaton with foregoing.)

Libellant's 1st interrogatory. Do you know the parties to this suit? where do you reside, and what is your occupation? how long have you pursued that occupation? what is your age?

Answer. I know Capt. Alex. Norton; I reside in St. Louis, Missouri, and am the agent of the St. Louis Board of Underwriters, and have been for nearly six years; I am of competent age to make an affidavit.

Libellant's 2d interrogatory. Do you know anything about the soundness and seaworthiness of the str. "Western World" at and before she was sunk on or about the 14th of December, 1852? State anything you may know about the soundness and seaworthiness of the "Western World" at and before the time she was sunk as aforesaid, and state your means of knowledge tending to shed light on the question of her soundness or unsoundness, seaworthiness or unseaworthiness, at the time of the loss aforesaid.

(Signed) BENJAMIN & FINNEY, for Libellants.

Answer. I know nothing of the soundness or seaworthiness of the "Western World" on or about the 14th day of December, 1852, except that she loaded at this port, and that her cargo was insured at the usual rates.

Respondent's Cross-interrogatories.

Respondent's 1st cross-interrogatory. Are you interested in any way in the result of this suit, or related to Capt. Norton, the libellant?

N. J. Eaton answers, no.

Respondent's 2d cross-interrogatory. When was the "Western World" built? How long did she run before she was made longer? How much was her length increased? How much was her tonnage increased?

Answer. The "Western World" was built in the fall of 1847 and winter of 1848, and ran about two years before she was lengthened. Sixty feet was added to her length, and her tonnage was increased about two hundred or three hundred tons.

Respondent's 3d cross-interrogatory. How was she made longer? Were not the same bow and forward timbers retained?

Answer. She was made longer by cutting her in two near the aft ends of the boilers and inserting sixty feet new material. The bow and stern remained without alteration.

Respondent's 4th cross-interrogatory. When the "Western World" was built did she have more power than was suitable for her size? Was there any additions to her power after she was made longer? If so, what?

Answer. The "Western World" had more power than was suitable to her size when she was first built. There was no addition to her power after she was lengthened.

Respondent's 5th cross-interrogatory. What is the effect, so far as the running and handling of a boat are concerned, of increasing her length and retaining the same power, granting that the power originally was not too great for her size? Will she be easier or harder to handle? Will her speed be greater or less than originally?

Answer. I have known several boats to be increased in length without increasing their power, and without making any perceptible difference in their speed or in the facility of handling them, except that it takes more time and space to round them to. As a general rule, a boat that has been lengthened without increasing their power will handle easier than she did before she was lengthened.

Respondent's 6th cross-interrogatory. How long before the loss of the "Western World" did you examine her to ascertain her soundness and seaworthiness? Did you find all her timbers entirely sound? Was there no decayed timber in her bow? Please state whether the examination you made was general, or whether it was so minute as to enable you to say positively what was the condition of all the timbers and the different parts of the boat.

(Signed) R. H. MARR,
of Counsel for Resp'd'ts.

Answer. For answer to this question I refer to my answer to the 2d direct question.

(Signed) N. J. EATON.

Subscribed and sworn to before me, this 14 day of November, 1855.

(Signed) D. C. TUTTLE,
Comm'r for Louisiana.

Deposition of Samuel Mackall, taken under commission of Nov. 4th, 1854, by D. C. Tuttle, La. Comm'r, at St. Louis, Missouri, November 20th, 1855, and read and offered in evidence for libellant, January 2d, 1856.

Libellant's 1st interrogatory. Were you on the "Western World" at the time of the collision between her and the "H. R. W. Hill?" If yea, in what capacity? Were you on watch at the time? Where did the collision occur? If you say you were an engineer on the

"Western World," and on watch at the time, please state which engine you had charge of. Who was your partner in the watch?

Answer. I was on the "Western World" at the time of the collision between her and the "H. R. W. Hill" as assistant-engineer. I was on watch at the time. The collision occurred about half-past four o'clock, on the morning of December 14th, 1852. I had charge of the larboard engine. My partner on watch was Edward Morgan, of St. Louis, Missouri, who was first engineer.

Libellant's second interrogatory. Please state whether or not the engines of the "Western World" stopped and backed before the collision; if yea, state fully what occurred in that respect.

Answer. Some little time before the collision the engine bells rang to stop, both engines were then stopped; in a few minutes the bells rang both to back; both engines were immediately set to backing and continued to back until the collision took place.

Libellant's third interrogatory. Did you notice any indication of danger before the bells rang to stop; previous to the stopping bells did you notice any signal bells? If yea, tell all about them you may happen to know; if you heard any signal bells, how long after was it before you heard the stopping bells; did or not both bells to stop ring at the same time?

Answer. I did not notice any indication of danger before the bells rang to stop; I do not remember of hearing the signal bells; both of the engine bells rang to stop at the same time.

Libellant's 4th interrogatory. State minutely all the circumstances within your knowledge tending to show when the bells of the "W. World" rung to stop, and how long it was before the collision, and whether her engines were stopped in reasonable time, or the contrary; when the order to stop was given, was it or not obeyed promptly?

Samuel Mackall, answers. About probably five minutes, or may be more, before the collision, the engine bells rang to stop, the order was immediately and promptly obeyed.

Libellant's 5th interrogatory. Did or not the engines of the "Western World" back before the collision; what interval was there between the stopping and the backing of her engines; how many back revolutions did she make before the collision; did she make enough to check or stop her headway?

Answer. The engines were set to backing some time before the collision; it was probably three minutes from the time the engines were stopped until they were set to backing; I don't know how many revolutions were made backing, but think there were as many made as would effectually check the headway.

Libellant's 6th interrogatory. In what condition was the engines and machinery of the "World" on that trip before the collision; in what respect was the vessel with regard to seaworthiness; how was she manned, officered and equipped?

Answer. The engines were in good working order; they were powerful, well-built engines; the boilers were also in good condition;

the engines were as good as any I have ever handled, before the collision on that trip; as far as I know the "Western World" was sound in every respect; she was well officered, having a good crew, and otherwise fully supplied as is customary.

Libellant's 7th interrogatory. Did the "Hill" back on both engines before the boats came together; did you hear any conversation among the officers on the "Hill" on that subject? If yea, state fully what occurred.

Answer. I do not know whether the "Hill" backed or not. I did not hear any conversation on the "Hill" about the collision.

Libellant's 8th interrogatory. Do you know where the "World" was struck? Where was the "Hill" struck?

Answer. I did not have to examine the bow of the "Western World," and I never examined the bow of the "Hill."

Libellant's 9th interrogatory. State any other fact within your knowledge calculated to be of service to the libellant.

(Signed) BENJAMIN & FINNEY,
For Libellant.

Answer. I am now twenty-seven years old; a resident of St. Louis, Missouri; I have been on the river eleven years; I know the officers who were on the "Western World" at the time of the collision with the "H. R. W. Hill;" they were not drinking men; I never saw either of them intoxicated; I did not see any of the officers play cards while off of duty on that trip; I was on watch the night of collision until 12 o'clock, and came again at four o'clock in the morning; there was no drinking or gambling among the officers or crew that night to my knowledge, nor at any other time while I was on the boat; after daylight, the morning of the collision, I saw some of the cattle from the "Western World" on shore on the Mississippi side a short distance below the foot of Princeton bar; I also saw some freight that had floated into shore near the foot of Princeton bar; also some pieces of the cabin.

Respondent's Cross-Interrogatories.

Respondent's 1st cross-interrogatory. Was it raining or not at the time of the collision?

Samuel Mackall answers. I think it was not raining at the time of collision, but it rained hard shortly afterwards.

Respondent's 2d cross-interrogatory. How was the engine-room of the "Western World" arrayed? was it closed at the sides forward of the engines, or was it opened so that you could stand at your post and see into the river?

Answer. The engine-room was closed at the sides forward of the engines.

Respondent's 3d cross-interrogatory. At what hour did you come on watch? how long had you been on watch when the collision occurred?

Answer. I was on watch that night until twelve o'clock, then went off and came on again at four o'clock A. M., about one half hour before the collision occurred.

Respondent's 4th cross-interrogatory. How far were the "Hill" and the "W. World" apart when the bells of the "W. World" rang to stop? how far apart were they when you commenced backing?

Answer. I do not know how far apart were the boats when the bells rang to stop, nor do I know how far apart they were when the "World" commenced backing.

Respondent's 5th cross-interrogatory. At what speed per hour were you running from the time you came on watch until the engines stopped just before the collision?

Answer. I do not know what speed pr. hour the "World" was running from the time I came on watch until the collision occurred.

Respondent's 6th cross-interrogatory. If in answer to the 3d interrogatory, you say you noticed any indication of danger, state whether or not you were alarmed.

Answer. I had not noticed any indication of danger, and therefore was not alarmed; I was not aware of the danger until I set my feet in the water on the main deck or guard.

Respondent's 7th cross-interrogatory. How long did you remain on board the "Western World" after the collision? did you take time to stop your engine? when you left the "W. World," to what part of the "Hill" did you go? did you not go to her larboard engine? in order to reach her larboard engine, did you not cross over from the starboard side, or did you get on board the "Hill" on the larboard side? did you leave the "Western World" on the larboard side, or did you cross over to her starboard side to get on board of the "Hill?"

Answer. I remained on board the "Western World" after the collision between five and seven minutes; I stopped the engine before I left; when I left the "World" I went to the starboard side of the "Hill," near the forward part of her boiler deck; I did not go to the "Hill's" larboard engine; when I left the "World's" engine on the larboard side, I went up to the Texas on the roof, and after getting some baggage, I went to the starboard side of the roof and then went down a stanchion or fender (the "World" was by this time turned over very much) on to the starboard guard of the "Hill" near the forward part of the boiler deck.

Respondent's 8th cross-interrogatory. After you got on board the "Hill," did not some one ask you if you had shipped up the bilge pump? what answer did you make?

Answer. After I got on board, some one asked me if I had shipped up the bilge pumps, I do not remember who it was; I replied that my partner or Mr. Morgan was at it when I left the engine room.

Respondent's 9th cross-interrogatory. At the rate the "Western World" was going, how long would it take to stop, ship up, and commence backing her engine? Loaded as she was, and going as she

the engines were as good as any I have ever handled, before the collision on that trip; as far as I know the "Western World" was sound in every respect; she was well officered, having a good crew, and otherwise fully supplied as is customary.

Libellant's 7th interrogatory. Did the "Hill" back on both engines before the boats came together; did you hear any conversation among the officers on the "Hill" on that subject? If yea, state fully what occurred.

Answer. I do not know whether the "Hill" backed or not. I did not hear any conversation on the "Hill" about the collision.

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Answer. I did not have to examine the bow of the "Western World," and I never examined the bow of the "Hill."

Libellant's 9th interrogatory. State any other fact within your knowledge calculated to be of service to the libellant.

(Signed) BENJAMIN & FINNEY,
For Libellant.

Answer. I am now twenty-seven years old; a resident of St. Louis, Missouri; I have been on the river eleven years; I know the officers who were on the "Western World" at the time of the collision with the "H. R. W. Hill;" they were not drinking men; I never saw either of them intoxicated; I did not see any of the officers play cards while off of duty on that trip; I was on watch the night of collision until 12 o'clock, and came again at four o'clock in the morning; there was no drinking or gambling among the officers or crew that night to my knowledge, nor at any other time while I was on the boat; after daylight, the morning of the collision, I saw some of the cattle from the "Western World" on shore on the Mississippi side a short distance below the foot of Princeton bar; I also saw some freight that had floated into shore near the foot of Princeton bar; also some pieces of the cabin.

Respondent's Cross-Interrogatories.

Respondent's 1st cross-interrogatory. Was it raining or not at the time of the collision?

Samuel Mackall answers. I think it was not raining at the time of collision, but it rained hard shortly afterwards.

Respondent's 2d cross-interrogatory. How was the engine-room of the "Western World" arrayed? was it closed at the sides forward of the engines, or was it opened so that you could stand at your post and see into the river?

Answer. The engine-room was closed at the sides forward of the engines.

Respondent's 3d cross-interrogatory. At what hour did you come on watch? how long had you been on watch when the collision occurred?

Answer. I was on watch that night until twelve o'clock, then went off and came on again at four o'clock A. M., about one half hour before the collision occurred.

Respondent's 4th cross-interrogatory. How far were the "Hill" and the "W. World" apart when the bells of the "W. World" rang to stop? how far apart were they when you commenced backing?

Answer. I do not know how far apart were the boats when the bells rang to stop, nor do I know how far apart they were when the "World" commenced backing.

Respondent's 5th cross-interrogatory. At what speed per hour were you running from the time you came on watch until the engines stopped just before the collision?

Answer. I do not know what speed pr. hour the "World" was running from the time I came on watch until the collision occurred.

Respondent's 6th cross-interrogatory. If in answer to the 3d interrogatory, you say you noticed any indication of danger, state whether or not you were alarmed.

Answer. I had not noticed any indication of danger, and therefore was not alarmed; I was not aware of the danger until I set my feet in the water on the main deck or guard.

Respondent's 7th cross-interrogatory. How long did you remain on board the "Western World" after the collision? did you take time to stop your engine? when you left the "W. World," to what part of the "Hill" did you go? did you not go to her larboard engine? in order to reach her larboard engine, did you not cross over from the starboard side, or did you get on board the "Hill" on the larboard side? did you leave the "Western World" on the larboard side, or did you cross over to her starboard side to get on board of the "Hill?"

Answer. I remained on board the "Western World" after the collision between five and seven minutes; I stopped the engine before I left; when I left the "World" I went to the starboard side of the "Hill," near the forward part of her boiler deck; I did not go to the "Hill's" larboard engine; when I left the "World's" engine on the larboard side, I went up to the Texas on the roof, and after getting some baggage, I went to the starboard side of the roof and then went down a stanchion or fender (the "World" was by this time turned over very much) on to the starboard guard of the "Hill" near the forward part of the boiler deck.

Respondent's 8th cross-interrogatory. After you got on board the "Hill," did not some one ask you if you had shipped up the bilge pump? what answer did you make?

Answer. After I got on board, some one asked me if I had shipped up the bilge pumps, I do not remember who it was; I replied that my partner or Mr. Morgan was at it when I left the engine room.

Respondent's 9th cross-interrogatory. At the rate the "Western World" was going, how long would it take to stop, ship up, and commence backing her engine? Loaded as she was, and going as she

was, how long would it take to check her headway and give her a backward motion? how far down stream would she go, before she would be made to go up?

Answer. At the rate the "World" was running, the engine could be stopped, shipped up, and set to backing in about a half minute; I do not know how long it would take to give her a backward motion; I do not know how far down stream she would go before she could be made to go up stream.

Respondent's 10th cross-interrogatory. How many back revolutions did the "Western World" make in a minute? Did you take time to observe, and can you now state with certainty, how many back revolutions you made before the collision?

Answer. The "World" was loaded she would make from 10 to 12 revolutions back in a minute; I did not take time to observe, and cannot state certain how many back revolutions were made by the "World" before the collision.

Respondent's 11th cross-interrogatory. Did you leave your engine before or after the boats came together? How long before or after?

Answer. I left the engine after the boats came together; I left probably four minutes after the boats came together; when I left the foot box I opened the door out on to the guard, the water was then on the guard of the "World," probably 2 inches deep.

Respondent's 12th cross-interrogatory. If in answer to the 6th interrogatory you say you heard any conversations among the officers of the "Hill" in reference to the backing of her engines, state how their conversation occurred; when did it take place; who was present beside yourself; who did the talking? State all that was said by the several persons who took part in the conversation, and also state how the officers of the "Hill" got to talking on this subject in your presence.

Answer. I did not hear any of the officers of the "Hill" speak of backing her engines; I did not have, nor hear any conversation with the officers of the "Hill" that I remember.

Respondent's 13th cross-interrogatory. If you say but one engine of the "Hill" backed before the collision, state whether the other one was stopped or was going ahead. When a boat is going up stream and one of the engines is stopped, does not the wheel drag heavily in the water? and if the other engine is backing hard, will not her headway be speedily checked? Would not the "Hill" going up stream, with one of her engines stopped and the other backing hard, check up, and begin to go down stream, sooner than the "Western World" going down stream could check up, and begin to move up stream by backing both her engines?

Answer. I do not know whether the "Hill's" engines stopped or backed; it is not customary for a wheel to drag heavily after stopping the engine; the headway of the boat keeps it turning over; I think if a boat was going up stream with one engine stopped and the

other backing hard, her headway would check up sooner or as soon as a boat's headway down stream could be checked with both engines backing.

Respondent's 14th cross-interrogatory. Did you observe, and can you state positively, what part of the "Hill," and on which side of her, and what part of the "W. World," and on which side of her, came together? Did the "W. World's" jackstaff fall in the collision? Did the "Hill's" jackstaff fall? Describe fully the injury sustained by each boat, and say precisely what part was injured.

Answer. I did not see the parts of the boats come together, and cannot say positively; I do not know whether the jackstaff fell on the "World" or not; I do not know anything of the "Hill's" jackstaff falling; I cannot say precisely what part of each boat was injured.

Respondent's 15th cross-interrogatory. If, in answer to the libellant's eighth interrogatory, you state any fact about which you have not been interrogated, state only what you witnessed and know to be true, and state now any fact, which you know calculated to exonerate the "Hill."

(Signed) R. H. MARR,
Of Counsel for Respd'ts.

Answer. I have not stated anything in answer to libellant's interrogatory No. 9, except what I witnessed and know to be the fact. I do not know anything I have not already stated in any way calculated to exonerate the "Hill."

(Signed) SAM'L MACKALL.

Subscribed and sworn to before me this 20th day of November, 1855. (Signed) D. C. TUTTLE, Comm'r for La.

U. S. District Court, Eastern District of Louisiana.

ALEX. NORTON, owner of "W. World," vs. Str. "H. R. W. HILL." } In Admiralty. No. 6853.

Deposition of John Henry, carpenter of "W. World," for libellant, taken before, and certified by U. S. Commissioner, Marcellus A. Foute, January 29th, 1855, at New Orleans, in presence of John Finney, Esq., for libellant, and R. H. Marr, Esq., for clm'ts. Offered in evidence for lib't, January 2d, 1856.

John Henry, being first duly sworn, did depose and say:—

I was on the "Western World" in the capacity of carpenter, at the time of her collision with the steamboat "H. R. W. Hill." I had been asleep before the collision. I had been in the pilot house until nearly eleven o'clock the night before.

I was asleep nearly up to the time of the collision, but was awaken by Mr. Fletcher, the pilot then on duty, hallooing down to the engineer, saying "Ned, back her hard" (Ned Morgan was the engineer

on duty). In about one minute and a half I heard Mr. Fletcher, the pilot, halloo down again to the engineer, saying, "Ned, back her like damnation, or she will run over us;" I then jumped out of bed —I was sleeping in Texas—and got as far as the chimneys when the boats came together. I heard the shock and felt it, and then I ran down stairs, and out on the forecastle; I saw at once that the "World" was sinking, and I hallooed back to the mate that she would go down inside of two minutes. I then ran back up stairs, and met Capt. Fletcher right at the head of the stairs, and told him to try to save himself for we were sinking. I then went into Texas and got some of my clothes, and started down stairs again.

The "Western World" was by this time turning over very fast and sinking, and I jumped off of her on to the "Hill."

The "Hill" being alongside of us, she floated with the wreck some four or five minutes, and then I went ashore on the Mississippi side. I judge that the two boats were about one hundred and fifty yards from the shore, when we came in collision. The night was drizzly, but the shores were distinguishable. I went ashore below Princeton bar, just at the foot of the bar, in the track or usual course of descending vessels.

I was standing right by the chimneys when the collision took place.

The "Western World" was ladened heavily, her guards being four or five inches clear of the water. The "Hill" was ladened lightly.

The "Western World" was struck at a point about seven feet from the stem. I mean by the stem the centre of the bow. I think the "Western World" careered over to the larboard side.

The bulkheads on the "Western World" commenced as far forwards as those on any boat, and run back aft as far as they could for the tiller.

I have seen the "Western World" since the collision, but have never examined her particularly.

I cannot say on which side of the "W. World" the hole was knocked into her; I was not forward at the time the boats came together.

From the time I heard the pilot, Fletcher, cry out first to the engineer, until the second time he cried out, the "Western World" had made I believe some fifteen or eighteen revolutions, and her engines were backing.

I had been on the "World" over three years; she had been thoroughly repaired the summer before at St. Louis; Captain Sparhawk inspected her at St. Louis, and pronounced her a good boat; I never found any rotten places in her, and she had good care taken of her; she was a good and sound boat.

Cross-examined.

I do not think it was more than six or seven minutes from the time the boats came together until I went ashore from the "Hill;"

the "H. R. W. Hill" had left the wreck when she started to put me ashore; I did not hear the bells of the "World" ring to back.

It was twixt four and five o'clock when I went ashore; it was about half-past four when the boats came together.

After the collision the "Hill" came alongside of the "World" at the starboard side; I believe she struck, however, on the larboard side.

Before the "Hill" came alongside she had backed down, and when some fifteen feet from the "World," she threw a line and breasted alongside of us.

I recollect seeing the guard of the "Hill" catch upon the knee of the "Western World;" this was when the "Western World" was listing over; it remained thus a short time; I did not go there to see; I do not know which way the bow of the "Western World" was pointing just before the collision, nor do I know which way the bow of the "Hill" was pointed.

The boats were near Princeton bar; I do not know whether the "Hill" was between the "W. World" and Princeton bar, or between the "Western World" and the Arkansas bar.

The shore on both sides were visible plain enough.

Mr. Bougher, first mate of the "W. World," was on her hurricane deck at the time of collision; I could not say where Captain Fletcher was at the moment of the collision; when I went down forward I saw him on the boiler deck.

I think that Dan. Blois, the partner of Fletcher, was in the pilot house with him at the time of the collision.

When I left the "Hill" Capt. Fulton requested me to take the yawl and follow after the wreck to see where it would go to, and also to try and save any person on it, and to see what I could do with the wreck; I took two hands with me and went in the yawl as directed.

I know that none of the officers of the "Western World" were intoxicated at the time of the collision.

The river was at a middling stage of water; I would not say how many feet of water there were in the river.

Examination in chief resumed.

Captain Fulton did not, at that time, drink anything; I have frequently heard him decline when asked to drink; I had known Capt. Fulton for ten or twelve years; I never saw him take a glass of liquor within my recollection.

I was with Mr. Fletcher the best part of two seasons; I never saw him under the influence of liquor; he would now and then take a glass, but was temperate.

I have been acquainted with Mr. Brougher; he is a very steady man, and one who attends to his business very closely; he will take a drink as same as another man, but I never saw him under the influence of liquor.

The officers and crew were sober and industrious, and steady; there never was any card-playing among the officers or crew on the boat whilst on a trip or under way; even when in port Capt. Norton would not permit the crew to play cards, and would often break up games when commenced.

(Signed) JOHN HENRY.

Sworn to and subscribed before me, this 29th January, A. D. 1855.

(Signed) M. A. FOUTE, U. S. Comm'r.

U. S. District Court, Eastern District of Louisiana.

ALEXANDER NORTON, Owner of the "Western World," vs. Str. "H. R. W. HILL" *et al.* — No. 6853. In Admiralty.

Deposition of Charles C. Clute, passenger on the "W. W." for libellant, taken before and certified by U. S. Comm'r, Marcellus A. Foute, March 15th, 1855, at New Orleans, in presence of John Finney, Esq., for libellant, and R. Marr for claimants, in evidence for libellant, January 2d, 1856.

John C. Clute being first duly sworn, deposes and says—

I was passenger on the "Western World" at the time of the collision between her and the "Hill." I was in bed at the time of collision. I was in my cabin in my state-room, and I was awaken by the 2d pilot of the "World" kicking my state-room door open. I got up, the collision had occurred before I got up. I could not see the "Hill" when I got up. I went out on the boiler-deck, and from there I went on to the hurricane-roof. There were a good many passengers on the deck at the time. I saw the crew of the boat forward trying to stop a hole into which the water was rushing. The hole seemed to be large enough to drive a coach and four through from the way the water was running in. The hole was on the larboard side of the boat. I should judge that some twelve or fourteen of her timbers had been carried away.

The next thing I saw was the "H. R. W. Hill." She came alongside, or rather stem to stem with us. The starboard side of the stem of the "World" caught on the starboard side of the "Hill." Mr. Fletcher, during this time, was at his post at the wheel of the "World." He was the pilot. I could not see him distinctly, but I was standing very close to him on Texas, and recognized him by his voice, with which I was familiar.

The "W. World" had by this time careened or listed over, and one of her smoke-pipes had fallen over, not entirely overboard, as it was held by one of its stays. I came down stairs and stepped from the forecastle of the "World" to the forecastle of the "Hill." They were at the time cutting away the "World" from where she had

caught on the starboard guard of the "Hill" for fear that she would pitch forward into them whilst sinking. About 2 minutes after I got on the boiler-deck of the "Hill" the "World" had careened so far that the cabin broke off and her hull capsized.

I saw a number of the deck-passengers struggling in the water, and from a calculation made by myself and the clerk of the "W. World," with whom I had gone down to collect passage money, I should suppose that some 30 or 40 of these lost their lives there.

I have an indistinct recollection of having seen both shores, but cannot swear positively that I did.

I recollect seeing one of the shores. I was very much excited, and in my shirt and drawers. I think that the first pilot, Fletcher, was the last man to leave the "World." From the time I got on the boat at St. Louis I saw none of the officers playing cards, or drinking.

The management of the boat was peaceful, and everything seemed to be in good order. I have myself been running on a steamboat as a clerk, and I never saw the officers of a boat better behaved. I should certainly have observed if their conduct had been improper and out of the way.

Cross-examined.

When the 2d pilot (Dan. Bloise) came to my state-room to wake me up, he came to the cabin door of the state-room. I started to get on to the hurricane-deck through the ladies' cabin, but, failing to find the stairs readily, I ran forward and went up on the deck as stated. I should suppose that it was about two and a half or three minutes after the collision when I first got on to the hurricane-deck of the "World." I could not tell whether the "World" was headed up stream or down stream when I got out on the hurricane-deck.

I think she was headed down stream, but I could not swear to it. I got up from my berth and went immediately to the hurricane-deck without stopping to get any of my clothes. I was very much alarmed from the fact that the pilot told us that the boat was sinking, and in very deep water—in a hundred and fifty feet of water.

When I first got up the "World" had listed over, I suppose at an angle of 23 or 25 degrees, after I had got on the hurricane deck she listed over at an angle of about 45 degrees, so much so, that it was difficult to maintain one's footing on deck.

I cannot positively swear whether the jackstaff of the "Western World" was down or not when I got on the hurricane deck. I was standing on the starboard side of the pilot house.

The boiler deck of the "World" was not filled up with corn. I recollect the exact situation of the boiler deck, as many of the passengers slid down on a plank from the boiler deck of the "World" on to the forecastle of the "Hill."

The injury to the "W. World" was received on the larboard side of her, about six or eight feet from her stem, ranging back from

eight to twelve feet. From the appearance of the injury, I should judge that the "Hill" must have struck her quartering across her bows. I came around in front of the pilot house from the starboard side, and as soon as I saw the lights of the "Hill," I came down to try to get on board of her. I cannot tell whether the boat was nearest to the Mississippi or Arkansas shore.

The night was pretty dark, and it was raining when I came out first.

I came out from the light of the cabin. I saw the shore very plainly when the light of the "Hill" shone on it. I saw it before that.

The starboard guard of the "Hill" came under the starboard guard of "W. World."

The forward part of the guards of both boats came together a little nearer the stem of the "World" than the stem of the "Hill."

I did not notice whether any injury was done to the starboard side of the "World." I think there was none. I did not notice whether the "Hill's" jackstaff was down or not.

I do not know whether they went ahead on the engines of the "Hill" while they were together in this way.

The "Hill" was fifteen or twenty minutes by the side of the wreck after the hull capsized. I did not notice that the engines of the "Hill" were going ahead until we got under way.

The "Hill" and the wreck came near ashore, and the "Hill" laid by shore, and sent out a boat to the wreck. The "Hill's" officers sent out a boat, but I did not think it staid long enough to save any one. This was a subject of remark with us all.

I have no interest whatever in this suit. The collision must have occurred in the neighborhood of four o'clock in the morning.

Re-examined.

Capt. Fulton took charge of the "W. World" at Cairo, where Capt. Norton left her, as I understood, to go to Springfield. The standing of the "W. World" at St. Louis was as number one steamboat. I know this by her reputation as a passenger steamer, and from hearing old steamboat men speak of her as a good passenger boat, and safe.

After I got on board the "Hill" I remained on her about two hours, when I got off on to the "Mohican."

(Signed) C. C. CLUTE.

Sworn to and subscribed before me, this 15 day of March, A. D. 1855. (Signed) MARCELLUS A. FOUTE,
U. S. Comm'r.

U. S. District, Eastern District of Louisiana.

ALEX. NORTON, owner of str. W. World,
vs.
Str. "H. R. W. HILL."
} In Admiralty. No. 6853.

Deposition of Henry Evans, for libellant, taken under commission of November 4th, 1854, at Cincinnati, Ohio, and certified October 15, 1855, by Edward R. Newhall, a comm'r of deeds for the State of Louisiana, on interrogatories and cross-interrogatories; offered and read in evidence for the libellant, Jan'y 2d, 1856.

Libellant's first interrogatory. Do you know the parties to this suit? Where do you reside? What is your occupation, and how long have you pursued it? Have you ever been a pilot on the Ohio and Mississippi rivers? if yea, how long upon each? What is your age?

Henry Evans answers. I know the plaintiff now, but did not know him at the time of the collision between the "W. World" and the "Hill." I have no fixed place of residence, but hail from Cincinnati. I am a flat-boat pilot on the Ohio and Mississippi rivers. I have pursued that occupation on both rivers about nine years. I have been on both rivers altogether about thirteen years. I am thirty-three years old.

Libellant's 2d interrogatory. Have you any knowledge of a collision between the steamer "Western World" and the "H. R. W. Hill," which occurred in the Mississippi River not far below Princeton, on or about the 14th December, 1852? Did you or not witness said collision? Where were you at the time—if on the river, on what kind of a vessel?

Henry Evans answers. I have a knowledge of that collision which occurred at that time and place between the steamers "Western World" and "H. R. W. Hill." I witnessed that collision; I was in the Mississippi River on two flat-boats.

Libellant's 3d interrogatory. Where did the collision take place? State as accurately as you can. If you say you were on a flat-boat at the time of the collision, please state where your flat-boat was at the time; how far from Princeton bar was your flat-boat at the moment of said collision, and how far down Princeton bar was it? In what capacity were you on said flat-boat?

Henry Evans answers. The collision took place near Princeton, at what is called Princeton bar. At the time of the collision, I was about one-half of the distance down the Princeton bar, about two hundred and fifty yards from the Princeton bar. I was pilot on the flat-boat at the time, and in charge of the boats.

Libellant's 4th interrogatory. Did the "Hill" pass your flat-boat that night? If yea, how far from the place of collision was your flat-boat when the "Hill" passed her? Did she pass you above or below the place of collision?

Henry Evans answers. I was going down and the "Hill" was coming up, and she passed me near the place of collision, but not until after the collision. My flat-boat was about half a mile from the place of collision when the "Hill" passed me after the collision. She passed me below the place of collision. I was about one hundred yards above the two boats when the collision took place. When the collision took place, the steamboats drifted down the river.

Libellant's 5th interrogatory. How far from Princeton bar was your flat-boat when the "Hill" passed her, and how far down the bar was your flat when she was thus passed? In passing your flat how near did the "Hill" come to you? State as accurately as you can. When the "Hill" went up past your boat was she running on the Mississippi side of the river or the Arkansas side, or near the middle of the river? On which side of you did the "Hill" pass?

Henry Evans answers. After the collision, my flat-boats and the "Hill" passed each other about opposite to the foot of Princeton bar, and about three hundred and fifty yards from the bar. In passing my flat-boats, the "Hill" came as near as one hundred and twenty-five yards to me. When the "Hill" went up past my flat-boats, she was running on the Mississippi side of the river. She passed me on the larboard on the Mississippi side, and between me and Princeton bar.

Libellant's 6th interrogatory .Where did the collision occur? At the time of the collision, how far from Princeton bar, and how far down said bar from its head or upper part were the two steamboats?

Henry Evans answers. The collision occurred opposite the Princeton bar. At the time of the collision, the two steamboats were two hundred and fifty yards from the bar, and just below the heads of the willows on the bar, and near about half way down the bar.

Libellant's 7th interrogatory. From the time the "Hill" passed your flat-boat until the collision, please state what course she pursued, and how she manœuvred. When you first saw the "Hill," where was she? what course and direction did she pursue from the time you first saw her until she passed by your flat-boat? At the time you first saw the "Hill," where did she appear to you to be going?

Henry Evans answers. The "Hill" did not pass me until after the collision. When I first saw the "Hill," she was running up the Mississippi shore, about a mile below the foot of Princeton bar. She pursued on up the Mississippi shore until she got to the foot of Princeton bar, or a little above the foot, and then turning out and running in a quartering direction for the Arkansas shore, until she came in collision with the "W. World." After she came in collision with the "Western World," the two steamboats floated down some half a mile to where they and my flat-boats passed each other.

Libellant's 8th interrogatory. Did you hear any signal bells from either boat? If so, which and what were the signals, and which

tapped first, and how answered? State all about the signals exchanged just as they occurred.

Henry Evans answers. I heard signals from the bells of the boats. The "World" first tapped one bell, and stopped her engines; she floated on some time, and tapped her bell again, one tap, and immediately commenced backing. About the time the "World" began to back, the "Hill" tapped two bells.

I heard no engine bells on the "Hill" until about the time the collision took place; and I think she was under full headway when she came into the "World."

Libellant's 9th interrogatory. At the time you heard the signal-bell from the "Hill," did you or not call any person on your boat, and make any observation about the matter? If yea, state fully what passed.

Henry Evans answers. When I heard the two bells on the "Hill," I remarked to the two or three men who were on the deck of my flat-boat to call the other men from below, as there was going to be difficulty between the two steamboats; and I remarked that we must get away from there, as the "Hill" had turned, and was coming out from the Princeton bar; and soon after the collision took place.

(Adjourned to Saturday, September 8th, 1855.)

Libellant's 10th interrogatory. How far were you from the two boats when they came together? did you hear bells to stop and back on the "Western World"? did she or not make any back revolutions, and if yea, how many? was the "W. World" making headway at the time of the collision? Answer according to your best judgment.

(Saturday, September 8th, 1855.)

Examination resumed.—Henry Evans, answers. I was about one hundred yards from the two boats when they came together; I heard the bells on the "W. World" to stop and back; I think she made from five to ten back revolutions; I don't think the "Western World," at the time of the collision, was making headway through the water, but was floating with the same speed as the current.

Libellant's 11th interrogatory. At and before the time of collision, did the "Hill" back? Had the "Hill" stopped and backed with the same diligence that the "World" did, do you think the collision would have occurred? What kind of a night was it? Was it or was it not too dark for a descending boat to run?

Henry Evans, answers. The "Hill" did not back either at or before the collision; I don't think that the collision would have occurred, if the "Hill" had stopped and backed with the same diligence that the "World" did; the night was tolerably dark, and it rained some; I think it was drizzling a very little at the time of the collision; there was no time that night that I could not see both shores in the middle of the river; I saw about midnight one other boat descending the river.

Libellant's 12th interrogatory. How was your flat loaded? Did you stop running that night?

Answer. I was loaded with potatoes drawing about 40 inches water; I did not stop running that night; I run all night.

Libellant's 13th interrogatory. At the time the "Hill" passed you, which was nearest in the Princeton bar, the "Hill" or the "World?" If you say, the "Hill" was nearest into the Princeton bar at the time she passed you, please state how the boats came together. Did the "Hill" run out from the Princeton bar or the "World" come into the bar? State in detail all you may know of the manner in which the collision happened.

Henry Evans, answers. Both the steamboats passed me together, and which was nearest the bar I cannot say; I think the "World" was running straight down the bar in the channel of the river, and the "Hill" was coming out from the bar; I will state in detail all I know of the manner of collision; I was floating down about opposite to Princeton (the town), when I saw the "Hill" coming up the Mississippi shore, some distance below, and immediately after I saw the "Western World" coming down the river in the channel, or as near the channel as I know where it was; when the "World" got about opposite or alongside of my flat boats she tapped her bell once and stopped her engines and floated on some little time, and tapped her bell again once; she then rang her backing bells and commenced backing; at that time, or when the backing bells of the "World" were rung, the "Hill" tapped her bell twice; previous to this, she had not tapped her bell, at least that I could hear it; the "Western World" had then made from five to ten back revolutions when the "Hill" came into her. I heard no engine bells on the "Hill" until about the time the boats came together. In the first part of this answer, I said that the "World" was running straight down the bar in the channel of the river, I ought to have said that the "World" was not running, but laying straight with the channel. As the "World" lay with the channel, the "Hill" came out from the Princeton bar, quartering out, and struck the "World" on the larboard near her bow, that slew the "World" round in the river, and the two steamboats floated down the river, and my flat boats and the two steamers passed each other about opposite to the foot of Princeton bar, which was the only time we passed each other.

Libellant's 14th interrogatory. At the time you first saw the "Hill," which was the nearest the Princeton bar, the "Hill" or the "World?" If the "Hill" were nearest the Princeton bar, how did the boats come together—did the "Hill" run further out from the bar, or the "World" come further in towards it?

Henry Evans, answers. When I first saw the "Hill" I was too far off to tell which was nearest Princeton bar, the "Hill" or the "W. World;" I saw the "Hill" first; I had not seen the "World" when I first saw the "Hill;" when I first saw the "Hill," I could not then tell which was nearest the bar; I don't remember and can't say

which boat was nearest the bar, until just before the collision; I discovered that the "Hill" was nearest the bar and coming out from the bar, while the "World" lay straight down the channel.

Libellant's 15th interrogatory. State any other facts within your knowledge calculated to be of service to the libellant, Alex. Norton. (Signed) BENJAMIN & FINNEY,
Proctor for libellant.

Henry Evans answers. I don't know anything more of service to Alex. Norton, except to say that at the time of the collision there was a good stage of water; there was a six foot bank; the "World" was going in the place where she ought to go for a down stream boat, and had the "Hill" been in her proper place the collision would not have taken place. From the time of the collision until the steamers passed my flatboats, the steamers had worked out a little from the Princeton bar, from the fact that the "Hill" struck the "World" on the larboard, which would slew her around into the river.

Respondent's 1st cross-interrogatory (exceptions reserved). How long have you resided at your present place of residence; where did you live previously?

Henry Evans answers. I have no place of residence, though as I have said, I always hail from Cincinnati; I was born in Dearborn County, in Indiana; I left that place and went on the river when I was 15 or 16 years old, and since that time have had no fixed place of residence.

Respondent's 2d cross-interrogatory. At what hour in the morning of the collision did you meet the "Hill;" how came you to be up at that hour; what was your capacity on the flatboat; in whose employ were you?

Answer. I met the "Hill" early in the morning, between four and half past four; I was pilot on the two flatboats, and on watch at that time; I had been up all night; I was pilot and had charge of the boats; I was in the employ of a Mr. Murphy, whose first name I don't remember; he was owner, or part owner of the flatboats.

Respondent's 3d cross-interrogatory. How many times had you seen the "Hill" before this morning? where had you seen her? was she going up or down when you saw her before?

Henry Evans answers. I think that I had only seen the "Hill" but one time, *before the morning* of the accident, and I think that it was when she was going down the Mississippi, that I saw her before.

Respondent's 4th cross-interrogatory. How fast were you floating down stream when the "Hill" passed you, just before the collision; how fast was the "Hill" going up?

The "Hill" did not pass me until after the collision; both before and after the collision I was floating down the river at the rate of four miles and a half an hour; the "Hill" was making but very little headway *up* the river when we passed each other after the col-

lision; before the collision she appeared to be making pretty good headway; when I say she was making little headway when my flat-boats and the "Hill" passed each other, I mean that she was struggling with the "World;" therefore she was holding against the current; we passed each other in that condition.

Respondent's 5th cross-interrogatory. How wide was the river at the place where you met the "Hill;" how far below the head of Princeton bar did you meet her; how far below Johnson's on the Arkansas side?

Henry Evans answers. At the place where I met the "Hill," the river was, I suppose, a mile wide from bank to bank; I met her about the foot of Princeton bar; I don't know the length of the bar and can't say how far below the head of the bar it was that I met her; I met the "Hill" some three or four miles below Johnson's place in Arkansas, but on the Mississippi side of the river.

Respondent's 6th cross-interrogatory. Where did you meet the "Illinois" just before the collision? how fast did she seem to be going up?

Henry Evans answers. I met the "Illinois" a short distance above Johnson's negro houses just before the collision; I did not take particular notice how fast she was going up, but I think she was going at her common speed.

Respondent's 7th cross-interrogatory. What sort of a night was it? did you see the stars? was it raining? was there any mist on the river?

Answer. It was tolerably dark, but not so dark but that I could see both shores in the middle of the river; I don't recollect whether the stars were to be seen or not; it was raining occasionally during the night—I believe that it was drizzling some at the time of the collision; there was a low mist occasionally on the water during the night, I believe there was a low mist at the time of the collision, but not so heavy a mist but that I could see the names of both the "Illinois" going up and the "W. World" going down as they both passed me.

Respondent's 8th cross-interrogatory. How far were you from the two boats when the collision occurred? how long was it after the "Hill" passed you that the collision occurred? how long was it after she passed you when you heard the signal bell?

Henry Evans answers. I was about one hundred yards from the "World" when the collision took place, and about one hundred yards and the length of the "World" from the "Hill," the "World" was between me and the "Hill" at the time of collision, or rather I was on the same side with the "Hill," and could see the whole length of the "World" to her bow. I was up stream and they were down stream when the collision occurred; the "Hill" did not pass me until after the collision occurred; it was near twenty minutes or perhaps ten or fifteen minutes, from the time of the collision to the time when we passed each other; I heard the signal bell before we passed each other.

Respondent's 9th cross-interrogatory. Make a drawing of the river, say from Johnson's, on the Arkansas side, to the foot of Princeton bar—mark out the channel for a down stream boat and for an up stream boat on this drawing; designate the point at which you met the "Hill;" show where she was and where you were when she passed, and the point at which the collision occurred.

Henry Evans answers. In answer to this 9th cross-interrogatory, I have drawn a map as well as I can, showing the channels for up and down steamboats—the point where I first saw the "Hill," the point where the collision occurred, and the point where we passed each other after the collision.

(For map referred to by witness, see original, page 243.)

Respondent's 10th cross-interrogatory. If in answer to the 10th interrogatory you say you heard the bells of the "W. World" to stop and back, state how you were able to distinguish her bells from the "Hill's" bells; how do you know whether the "W. World" was making any headway or not at the time of the collision? how do you know how many revolutions back she had made?

Henry Evans answers. I know the difference between the bells of the two steamboats, because the "World" sounded her bell when she was right alongside of me, and the "Hill" was below coming up; I know that the "World" was not making headway at the time of the collision because she was not getting further away from me than she had been for some little time before the collision took place; I did not count the number of back revolutions that she made, but I suppose it would take from five to ten revolutions to check her from not getting away any further; I noticed particularly her back revolutions, and thought at the time whether there was any danger of her backing up upon me when I heard her backing bells.

Respondent's 11th cross-interrogatory. How far can you hear the engine bells of a steamboat? Are the bells for backing larger or smaller than the bells to stop? Was there any peculiarity in the sound of the "Hill's" engine bells by which you could distinguish them from the engine bells of the "W. World?" Which boat had the largest bells?

Henry Evans answers. Sometimes I can hear a signal bell at a great distance, and sometimes not so far, according to the size of the bells; the backing bells are small bells in the engine room, and smaller than the stopping bell generally I believe. When I have spoken of the signal bells, I mean the larger bell on the top of the hurricane deck; I don't know that there was any difference in the sound of the bells of the two steamboats, but I could tell the difference between them because the "World" was right alongside of me when she sounded her signal bell, and the "Hill" was below; I don't know which boat had the largest bell.

Respondent's 12th cross-interrogatory. If in answer to the 11th interrogatory you say the "Hill" did not back before the collision, say how you know that fact; how far were the two boats apart when

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Henry Evans answers. Sometimes I can hear a signal bell at a great distance, and sometimes not so far, according to the size of the bells; the backing bells are small bells in the engine room, and smaller than the stopping bell generally I believe. When I have spoken of the signal bells, I mean the larger bell on the top of the hurricane deck; I don't know that there was any difference in the sound of the bells of the two steamboats, but I could tell the difference between them because the "World" was right alongside of me when she sounded her signal bell, and the "Hill" was below; I don't know which boat had the largest bell.

Respondent's 12th cross-interrogatory. If in answer to the 11th interrogatory you say the "Hill" did not back before the collision, say how you know that fact; how far were the two boats apart when

the "W. World" commenced backing? How far from you was the "W. World?"

Henry Evans answers. I know that the "Hill," did not back before the collision, by seeing her running and hearing her wheels; when the "W. World" commenced backing I suppose the two boats were two hundred yards apart, and the "World" was, I suppose, one hundred yards from me; I was about the same distance from the "World" when she commenced backing, and when she came into collision with the "Hill" or the "Hill" with her.

Respondent's 13th cross-interrogatory. Have you ever been employed as pilot on a steamboat? on what boat? when was it? where did you run? how long were you employed as pilot?

Henry Evans answers. I do not consider myself a steamboat pilot; I have never been employed as a pilot; I have several times been employed by steamboat pilots to assist them, as for instance on the "Delta," the "Schuylkill," and others; these boats ran between New Orleans and Cincinnati; I don't recollect the years when I was so employed to assist the pilots of these boats, it is some years back.

Respondent's 14th interrogatory. Which side or part of the "Hill," and which side or part of the "W. World" came together? How do you know, what reason have you to think, that one side or one part of the one boat, and one side or one part of the other boat came together rather than another?

Answer. The larboard side, near the bow of the "World," and the bow of the "Hill" came together; I know this from seeing them when they came together in this manner because I saw them, and as I saw them, they did not come together in any other manner; I don't think that I can be mistaken.

(No cross-interrogatory numbered 15.)

Respondent's 16th cross-interrogatory. Do you not know, and is it not true, that the "Hill" met you below the point at which she would have crossed to the Arkansas side, and that her pilot, seeing your light, sheered off and ran over to the Arkansas side sooner than he would have otherwise done, in order to get out of your way?

Henry Evans answers. The "Hill" did not meet me until after the collision; I do not know where she would have crossed to the Arkansas side; I don't know that her pilot saw my light before he saw the "World's" lights; I do not know what would have made her cross to the Arkansas side sooner or later.

Respondent's 17th cross-interrogatory. Did you stop at Vicksburg on your way down, or soon after the collision? Did you have any connection with Mr. Porterfield, who kept the wharf boat at Vicksburg, about the collision? What did you say to Mr. Porterfield about the collision? Did you not converse with some other person at Vicksburg about the collision? What did you say?

Henry Evans answers. I stopped at Vicksburg soon after the collision in a skiff; I stopped at Mr. Porterfield's wharf boat; I told him that I was close by when the "Hill" and "W. World" came

together; I asked him if he was an agent at Vicksburg for the "World;" he told me he was; I told him I had a sack of papers belonging to the "W. World;" he told me to take them on to New Orleans; I don't recollect any of the particulars of the conversation; I had but very few words with him; I do not recollect that I conversed at this time with any other person at Vicksburg about the collision.

Respondent's 18th cross-interrogatory. Did not you tell Mr. Porterfield, or some other person at Vicksburg, on your way down, or soon after the collision, that the "Hill" was not in fault, and did you not leave with Mr. Porterfield, or some other person at Vicksburg, your name and a message for Capt. Newell, to the effect that you would be a good witness for him in case of a suit about the collision? Did not something of this sort occur? State exactly what did occur—who you talked to at Vicksburg about the collision, what you stated, and what message you left for Captain Newell, or for any other person interested in the "Hill."

Henry Evans answers. I did not have any conversation with any person at Vicksburg, except Mr. Porterfield, about the collision that I recollect of; I did not leave my name or message with Mr. Porterfield, or any other person, for Capt. Newell, or anybody else, that I would be a good witness, or anything of the sort; there probably might have been some person standing by who might have asked me a question, but I do not recollect it; I was at Vicksburg but a few minutes.

Respondent's 19th cross interrogatory. Are you related to Captain Alexander Norton? Will you gain anything if he succeeds, or lose anything if he fails in this suit? Have you any interest in showing that the "Hill" was at fault in this collision?

Henry Evans answers. I am not related to Capt. Norton; I will neither gain nor lose by his success or failure in this suit; I have no interest at all in showing that the "Hill" was at fault; I have no interest in either boat, except to state the facts as I saw them.

Respondent's 20th cross-interrogatory. Have you conversed with Capt. Norton, or with any agent or friend of his in reference to the testimony you are to give in this cause? Are all the statements which you have made in relation to the time, and place, and circumstances of the collision, and to the position of your own boat and of the two steamboats, made from your own knowledge and recollection, or are they made partly from your own knowledge and recollection, and partly from impressions derived from conversation with some person or persons about the collision, or about this suit?

Henry Evans answers. I have not conversed with Capt. Norton, or any agent or friend of his, or anybody else as to how I should give my testimony. Capt. Norton remarked to me that he wanted me to study the matter, and give in my statement just as it happened, what I saw. My statements are all made from my own

knowledge and recollection, and not from conversations or impressions from any one.

Respondent's 21st cross-interrogatory. If, in answer to libellant's last interrogatory, you state any fact about which you have not been specially interrogated, you will be particular to state only what you witnessed and know to be true; and you will also now state any fact within your knowledge calculated to exonerate the "Hill."

(Signed) R. H. MARR, of Counsel for Respond'ts.

Henry Evans answers. I don't know that there is anything that I can say to exonerate the "Hill." I wish to make now a more full and particular answer to the 16th cross-interrogatory. The "Hill" met me between two crossing-points, and in a place where steamboats are not in the habit of running at that stage of water which existed at the time of the collision, or at any other stage of water. The "Hill" met me above the point at which she should have crossed to the Arkansas side. I can't say what was the cause of her pilot sheering off there when he did, unless it was that he found himself where he ought not to have been for an up-stream boat, and tried to get over in his right place before he met a down steamboat or the "World." I believe that I can state nothing more to exonerate either the "Hill" or the "World." I have stated, in my last answer to the interrogatories in chief, only what I know to be true.

(Signed) HENRY EVANS.

U. S. Dist. Court, Eastern District of Louisiana.

ALEXANDER NORTON
vs.
Stm'r "H. R. W. HILL" et al. } In Admiralty. No. 6853.

Deposition of M. A. Mathis for libellant, taken before and certified by U. S. comm'r *M. A. Foute*, June 3d, 1854, at New Orleans, in presence of Jno. Finney, Esq., proctor for lib't; and R. H. Marr for claimants. Offered and read in evidence for libellant, January 2d, 1856.

Marshal A. Mathis, being first duly sworn, deposes and says. I am a regular salvor or wrecker on the Mississippi River. This has been my occupation since the year 1846.

In pursuing this business, I have been in the habit of using a diving-bell, boat, and submarine armor for the purpose of recovering sunken property in the Mississippi River and its tributaries.

In Decbr. 1852, I was called upon and deputized by Capt. A. Brather, of the Home Mutual Insurance Company, to go to the wreck of the "World" and take charge of it, and the property therein. I proceeded on the steamer Belle Key to Lake Providence, and there ascertained that the wreck was lying at the foot of the bar of Island 93, about 5 miles above Lake Providence.

I immediately took charge of the wreck or hull of the boat as she lay in the middle of the river. From the wreck I proceeded on up

the river and took charge of the cargo that had floated from her, between where the hull lay and the place where I understood the disaster had taken place. When I got as high as Princeton, Miss., I returned to the wreck, as I could hear of no cargo above. I had the hull of the "Western World" nearly high and dry; with the exception of a very little of the bow, and very little of the stern, the hull was entirely out of the water.

The timbers were strong and good as I found them. We cut the wreck to pieces; we had great difficulty in cutting her to pieces; there is no question of her having been sound and strong; she was remarkably well fastened; I only saw one unsound timber in the whole boat, and this was a knot.

I have been in the habit of racking or breaking boats; we cut, saw, tear or rip, any way that is most convenient, owing to the position of the wreck.

In cutting to pieces the wreck of the "W. World" we had more difficulty than usual, owing to her double stringers and fastenings. I would consider her to have been a staunch, strong boat. She would have passed as such before any board of examiners.

The farthest point up the river that I found any cargo was at the upper end of Turnbull's landing, two and a half or three miles below Princeton, marked on the map A B as "Carolina Landing." The freight had lodged in the tops of trees and drift wood, from which it was taken, as they told me.

(Objected to as being hearsay.)

I found no freight or cargo on Arkansas bar, or any on that side of the river until I got to Ashport, six miles below the "Carolina Landing," on that opposite side of the river from "Carolina Landing."

At the "Carolina Landing" I saw 20 barrels of lard of the freight; I do not recollect anything else or other kind of freight.

I am well acquainted with the Mississippi River about Arkansas bar, and that portion represented by the map A B.

The line drawn by me on the map "A B" and marked "current," indicates the course of the current of the river at the time I was wrecking the "W. World."

The freight which I found at the "Carolina Landing" must have been put afloat, as I think, on the Mississippi side (eastern side) of the line marked current.

(Objected to as being the opinion of witness.)

If the freight had been put afloat west of the line marked current, opposite G. W. Johnson's place, or below it, I do not think it would have landed of itself at the "Carolina Landing;" I do not think it possible.

(Objected to as being the opinion of the witness.)

I do not think that the freight, if put afloat on the west side of the line as above, could have crossed the current above "Carolina Landing."

(Objected to for same reason as last noted.)

From my observation of the hull of the "W. World," I would say that she was struck on the larboard side of her bow. She was broken in on the larboard side of the bow, about 15 and 16 feet, as near as I could judge, from the stem; that was when the blow was received which did the damage. That was the only place in the boat that was broken at all.

I should judge that blow must have been a severe one, for the hull was cut down to within three streaks of the keel, the third streak was a little cut into also; a streak is somewhere between eight or ten inches in width. The third streak is about twenty-eight or thirty-six inches from the keel. I cannot tell the size of the hole. The timbers appeared to have been driven in and broken off; the hole was largest at the top and smallest at the bottom; at the bottom the hole seemed to be merely cut in, at the top the timbers and plank were knocked in a space of ten or nineteen feet, as I remember. My opinion was, at the time, that the cut in the hull had been cut into it by the stem of a steamboat, I had understood that there had been a collision between the "H. R. W. Hill," and the "Western World" before.

The small cut near the keel was about 4 to 6 feet aft of the stem where the stem joins on to the keel.

The plan annexed, marked No. 1, shows the keel and stem. Figure 2 represents where the stem starts out from the keel, and the figure 3 shows the place where the cut was made. The plan is intended to show the shape of the stem.

Plan No. One, referred to by witness.

No. One.

(For plan No. 1, see original, page 261.)

I floated six or seven times, with the current, from Johnston's to Carolina Landing, with two yawls and a sweep-line, trying to find the boilers of the "W. World." I drifted with the current.

Cross-examination.

I was employed to go the wreck and take charge of it by Capt. Brothers, of the Home Mutual Insurance Co. Capt. Eaton (agent of the St. Louis underwriters) also employed me at Lake Providence to take charge of the wreck for those he represented.

I was not employed by Captain Norton. I have no interest in this suit. I can't remember the day I left New Orleans for the wreck. I left the same day that the news reached the city. I reached the wreck from four to six days after the disaster. I arrived at Lake Providence about 6 o'clock one day, and left the next morning for up the river, on horseback, in search of the cargo. I went the same morning, and took charge of the wreck. I did not remain on the wreck over a half hour, when I went on in search of the cargo. I was in the vicinity of the wreck for five or six days.

The first cargo I saw was taken out of the wreck by cutting into it, and carried to shore just opposite where the wreck lay.

When I found the wreck it was in the possession of some persons who had cut some five or six holes in the hull with axes and saws. They had cut the hull in the starboard side from amidship forward. The first cargo I found that was drifted ashore, was at Skipwith's Landing, about four or five miles above the wreck.

The first cargo I found on the Arkansas side was at the cut off, about ten miles below Princeton. All that I found on the Arkansas side had been rescued by some persons along shore. I could get little or nothing on that side.

The cargo found on the Mississippi side had been taken charge of by some persons, and rolled out ashore, all of it. I found nothing at all floating in the river.

I know nothing of the places where the cargo reached the shore, only where the people pointed out who had picked it up.

There had been very little change in the river from the time of the collision to the time when I got to the wreck. At the time I arrived there, it was a continuous dry bar from the first upper lump on the map "A B" to the foot of Princeton bar, marked on the map A B.

Question. If the collision had occurred west of the line which you have marked as the current, near the head of the Arkansas bar, and the "W. World" had been pushed by the "Hill" over towards the Mississippi shore into the current, would not portions of the cargo have landed at the place where you found the 20 barrels of lard?

Answer. I do not think the "Hill" could have pushed the "W. World" over in time, or enough for the freight or cargo to have landed where it was pointed out to me—it did land, because the river at that stage of water was near a mile wide, and I don't think that one boat could have shoved another boat that far across the current when in a sinking condition. The line marked "current" is drawn to represent the main force of the current, which, as near as I can tell, runs about one-eighth of the distance across the river at the Carolina Landing.

I consider it about seventeen or eighteen miles from the town of Princeton to where I found the wreck. I think there are no snags between Princeton and the place where I found the wreck (*i. e.*) in the main channel. There are along shore.

Two or three weeks, I judge, elapsed from the time I first arrived at the wreck, to the time I got back there a second time with my bell boats. I left the second time for the wreck from New Orleans with my bell boats about 7th of January, as I now recollect. When I got back to the wreck the river had risen about fifteen feet, and the wreck was under water entirely. I did not go down in the diving bell to examine the wreck. When I first arrived at the wreck, the hull was bottom upwards, and there was a space of about

sixty feet long to two or three feet wide along the starboard knuckle on which a man could walk.

The whole of the larboard knuckle was under water from three to four feet for the whole length of the boat. I could not see the stern of the boat until she ebbed dry in the summer. I never saw the stem of the "Western World"—the stem was knocked out plump and smooth—I saw nothing but the bolts and planks, &c.

Re-examination.

The hole which I saw would let the water in as fast as it could flow, and the boat so stove would sink in from three to five minutes.

(Signed) M. A. MATHIS.

Examination taken, reduced to writing, and sworn to and subscribed before me, this 3d day of June, A. D. 1854.

(Signed) MARCELLUS A. FOUTE,
U. S. Comm'r.

U. S. District Court, Eastern District of Louisiana.

ALEXANDER NORTON vs. Steamer "H. R. W. HILL." } No. 6853. In Admiralty.

Deposition of R. Phillips, filed Dec. 29th, 1855, offered and read in evidence for lib't, January 2d, 1856, taken by consent (in handwriting of P. E. Bonford and Albert Pike, Esqs., proctors).

Richard Phillips being duly sworn, deposes and says:—

That his principal pursuit for the last 19 years has been steamboating on the Mississippi River and its tributaries, with the exception of a short interval; is at present in command of the steamer "Flying Clouds," and is a regular licensed pilot; is well acquainted with Mr. Fletcher, who was on the "World" as pilot in December, 1852; has known him for 18 years; has had frequent and almost constant opportunities of forming an opinion as to his capacity as a pilot; during a portion of the time Fletcher was employed by deponent as a pilot; considers Mr. Fletcher, as a pilot, to rank among the very best; he was with deponent on the "West Wind," running between New Orleans and Cincinnati, for several months; and he also thinks on the "A. A. Phillips" or some other boat belonging to deponent, in the same trade; has known him as running on other boats on the Mississippi River, as almost in constant employment, when not engaged on his farm. Mr. Fletcher has been engaged as pilot on a great variety of the best boats; to those who know him best, Mr. Fletcher ranks as an exceedingly careful and prudent pilot; deponent considers him the best pilot on the Mississippi River, and his general reputation is that he is among the best pilots on the river. Mr. Fletcher is a sober man, is not addicted to drunkenness. Mr. Fletcher is from repute in good comfortable cir-

cumstance; believes him the owner of considerable property; has seen him in the management of his estate, selling wood at his wood-yards, and attending to the management of his farms on the Ohio River, near its mouth. Being shown the map "A B," says: That he is acquainted with the river at and about Princeton bar, as well as pilots ordinarily are. In a six or eight feet bank, which is a moderately good stage of high water, the proper course of an ascending boat is to hug or keep as closely as she can with safety, the Arkansas bar, until she comes around Johnson's Point; should she not choose to do so, however, she may take the Princeton bar, losing thereby some distance, but once having taken that bar she should keep around it up to its head abreast or above Flournoy's; pilots differ as to which is the best way to run; either would be a proper way at that stage of water; thinks that if a boat had taken either bar as her course she should keep to it and not deviate from it, except in the extremest emergency, and under no circumstance to cross over in front of descending boats; the proper course for a descending boat is above Johnson's Point near the middle of the river slightly to the Arkansas side, and upon that point the descending boat would front to the cut or bluffest part of the Princeton bar, about the centre of the willows on the bar. The Arkansas bar being a large and flat bar, is not considered a safe bar to hug too close for a descending boat, she could gain nothing by hugging too close to that bar. In a low stage of water, the Arkansas bar covered and uncovered runs out about a mile from the shore. If a descending boat were about Johnson's Point, and an ascending boat at about the place marked 7 on the map, they could not in the usual course of things come together at or about the head of the Arkansas bar, and on that side of the river so as to be in danger of collision; the ascending boat would have five times as far to run as the descending boat. If a collision had occurred between the bars and on the Arkansas side, the freight thrown out as a consequence of the collision could not cross the channel so as to float in at the foot of the Princeton bar, about Carolina Landing, it would keep for a considerable distance on that side of the river on which it was thrown out. Knows Capt. Fulton by repute, and has a slight personal acquaintance with him; he has commanded several boats; has been a long time in the business of steamboating, and is considered a competent officer as far as deponent's knowledge extends.

Cross-examined.

It has been over ten years since Mr. Fletcher was on any boat of mine, or any boat on which I was employed; I have known his habits until very recently, and they are as I have stated; I never saw him intoxicated, and don't know that he ever drinks too much, though I have seen him frequently tempted.

If a descending boat, coming from Johnson's point, had reached across the river to near Princeton bar, and an ascending boat was

coming up hugging Arkansas bar, the descending boat would ha e no business crossing over the Arkansas side, but she should keep on her course down the channel towards the Mississippi side, unless for the purpose of avoiding a collision, and when in extreme peril, in which case all rules give way.

(Signed) RICHARD PHILLIPS.

Sworn to and subscribed before me, this 20th day of Decbr., A. D. 1855. (Signed) C. M. BRADFORD, J. P.

United States District Court, Eastern District of Louisiana.

ALEX. NORTON
vs.
Str. "H. R. W. HILL." } In Admiralty, No. 6853.

Depositions of David Hiner, C. W. Stewart, and Robert Nelson, taken by consent for libellant (handwriting of P. E. Bonford, Esq.)

Filed Dec. 29th, 1855. Offered and read in evidce. Jany. 2d, 1856.

David Hiner, being duly sworn, deposes and says:—

That he has been engaged in steamboating for thirty-five years; for the last 17 years as pilot on the Mississippi and Ohio rivers, sometimes as captain; is well acquainted with Mr. Fletcher, the pilot of the "W. World;" has known him for nearly twenty-five years as pilot on the Mississippi and Ohio rivers; considers him a skilful, prudent pilot, as much so as any one deponent knows on the western waters; has been engaged on the same boat with him, and has had the best opportunity of judging of his capacity; Fletcher is well acquainted with the lower Mississippi, as much so as any one; never saw Fletcher intoxicated in his life; if Mr. Fletcher were a man of intemperate habits could not but have known it; Fletcher is the owner of a large farm on the Ohio River about 16 miles below Paducah; he has a large woodyard there, and a wharf boat; has known Fletcher in the possession of that farm for the last 12 or 15 years; Fletcher is in very comfortable circumstances; Fletcher has plenty to live on without going on the river; has known him to refuse employment on particular occasions; Fletcher has rece'd as high wages as any one on the river; Fletcher is an extraordinary careful man—he is prudent to an excess; has known him frequently not to sleep at night when it was not his watch, if the night was not at all dark; his reputation as a pilot among steamboat owners, captains, and pilots is of the highest—he is considered A No. 1 among them.

Deponent knows the bar below Princeton landing, called the Princeton bar; being shown the map marked A, says that the proper course of a descending boat in December, 1852, was the line of the channel as indicated by the dotted line b, c; the Arkansas bar is a

flat shoal bar and a descending boat could not run near it in December, 1852, on account of its shoalness.

(Signed) DAVID HINER.

Sworn to and subscribed before me this 28th day of December, 1855. (Signed) C. M. BRADFORD, J. P.

Coleman W. Stewart, being duly sworn, deposes and says:—

Is a regular licensed pilot on the Mississippi and Ohio rivers; has been piloting for the last twenty years; has known Mr. Fletcher, the pilot of the "W. World," for the last nineteen years; he is among the best pilots; deponent knows none better, and he is so considered by every one whom he has heard speak of him; has never been a pilot on a boat with him, but has frequently been in company with him; deponent on one boat and Fletcher on another boat ascending and descending, and was thus able to hear him frequently spoken of by steamboat captains, pilots, and owners; his reputation is that of a prudent, skilful pilot; never saw or heard of his being intoxicated; has known him to take a drink on meeting with a friend; knows him as the owner of a large very fine farm on the Ohio River, with a large woodyard; Fletcher has owned this place to deponent's knowledge for the last ten years; Fletcher has been able to live for many years without working on the river; is acquainted with Captain H. Fulton; he is fully competent to manage a steamboat on the Mississippi, and is a prudent, careful man; is considered a first-rate captain and clerk.

(Signed) COLEMAN W. STEWART.

Sworn to and subscribed before me this 28th day of Dec'b'r, 1855.

(Signed) C. M. BRADFORD, J. P.

Robert T. Nelson, being duly sworn, deposes and says. That he is a licensed pilot; has been piloting steamboats for the last ten years on the Ohio and Mississippi rivers. Knows Mr. Fletcher, the pilot of the "W. World;" has known him for the last fifteen years; he has always been regarded as one of the very best pilots on the Ohio and Mississippi we have. His reputation among all classes connected with steamboats—owners, captains, and pilots—is that he is a careful, capable pilot. He is a very steady man; never, to deponent's knowledge, intemperate. Knows Fletcher owns a large plantation, woodyard, and wharf-boat, and has plenty to live on without steamboating. (Signed) ROBERT T. NELSON.

Sworn to and subscribed before me this 28 day of December, 1855.

(Signed) C. M. BRADFORD.

Above testimony (of 3 witnesses) to be read by consent.

(Signed) R. H. MARR, for claimants.

Close of testimony for libellant.

U. S. Dist. Court, East. Dist. of Louisiana:

ALEX. NORTON, owner of St'r "Western World," vs. Steamer "H. R. W. HILL," &c. } No. 6853. In Admiralty.

Depositions of, 1st, Wm. H. Gerard; 2d, Bezin Bell; 3d, Ichabod T. Hill; 4th, J. M. Smith; 5th, W. H. McNairy; 6th, Jos. Edward; 7th, Robt. Graham; 8th, Geo. W. Farnsworth; for claimants and respondents, taken under commission of June 28th, 1853, at Nashville, Tennessee, and certified Oct. 15, 1853, by Egbert A. Raworth, Esq., Judge of the Court of Common Pleas for Davidson C'y, Tennesse, on interrogatories and cross-interrogatories, offered in evidence for claimants and respondents, 2d and 4th January, 1856.

Respondent's first interrogatory. State your age, residence, and occupation.

W. H. Gerard answers. That he is between 40 and 41 years of age; he resides in Nashville; his occupation is that of a steamboat pilot.

Rezin Bell answers. That he is between twenty-seven and eight years old; he resides in Nashville; his occupation that of a steamboat pilot.

Ichabold F. Hill answers. That he is thirty-eight years of age; resides in Nashville; his occupation is that of a steamboat watchman.

John Morgan Smith answers. That he is 35 years of age; he resides in Nashville; his occupation is that of a steamboat clerk.

W. H. McNairy answers. That his age is 38 years; he resides in Nashville; his occupation that of a farmer. (Omit here; properly on page 375 et seq.)

Joseph Edwards answers. That he is thirty-seven years old; he resides in Nashville; his occupation a grocer. (Omit.)

Robert Graham, answers. He is 39 years of age; and resides in Montgomery, Tenn.

Geo. W. Farnsworth answers. That he is 20 years of age, and resides in Nashville; his occupation is that of a steersman, or learning to be a pilot.

Respondent's 2d interrogatory. Were you or not on board of the steamboat "H. R. W. Hill," in December last, at the time a collision occurred between her and the "Western World?" If so, state in what capacity.

W. H. Gerard answers. That he was on the steamboat "H. R. W. Hill" when a collision occurred between her and the "Western World;" was employed on said boat in the capacity of pilot.

Rezin Bell answers. That he was on board the steamboat "H. R. W. Hill" at the time when a collision occurred between her and the "Western World," and was employed as pilot on her.

Ichabod T. Hill answers. That he was on the "H. R. W. Hill,"

at the time the collision occurred, in December last, with the "Westtern World;" he was employed as watchman.

John Morgan Smith answers. That he was on the "Hill," at the time of the collision with the "Western World," in December last, 1852, and was engaged as clerk.

W. H. McNairy answers. That he was on the "H. R. W. Hill" when a collision occurred between her and the "Western World," on the day of December last, between three o'clock and daylight; the collision took place in the Mississippi River, but does not, from his own knowledge, know the exact point. (Omit.)

Joseph Edwards answers that he was on board the "Hill" when a collision took place between her and the "Western World;" that as to the time and place, he does not know. (Omit.)

Robert Graham answers. He was on the steamboat "H. R. W. Hill" at the time of the collision referred to, in the capacity of engineer.

George W. Farnsworth answers. That he was on the "H. R. W. Hill" at the time stated, and was employed in learning the river from New Orleans to Nashville, with Capt. Gerard.

Respondents' 3d interrogatory. State all the facts and circumstances attending the collision, giving full particulars as to the time and place.

W. H. Gerard answers. That about the 14th of December, he came on watch at 4 o'clock in the morning at foot Princeton bar, until he came to a low place in the bar, when he saw the light of a flatboat, and sheered over towards the Arkansas bar; he straightened (her the "H. R. W. Hill") up for a steamboat-light that was showing across the point. While running that course he saw a steamboat-light coming round the point; he continued his course until the "Western World" rang one bell; he immediately stopped the "H. R. W. Hill" as soon as he could catch hold of the bell ropes. He then caught hold of the large bell rope, and rang two bells to let the "Western World" know that he was close to the left hand bar. He asked the captain what the plagued fool meant by ringing one bell. He also, at the time he made the remark to Captain Newell, shipped up both engines for backing. By that time she (the "Western World") was behind the starboard chimney from him. The "Western World" again rang another bell; he immediately started the "Hill" to backing on her larboard engine. He then told George Farnsworth to help him to give her the wheel over to the starboard quick. He backed the "Hill" until he saw her lights come forward of the chimney of the "Hill." He then backed the "Hill" on the larboard engine, and hollered to the engineer to back hard; Captain Newell also hollered at the same time to back her hard. The engineer answered Aye, aye, partner, she has got it all. He leaned himself up against the wheel to see whereabouts she would hit the "Hill," or see if the "Hill" would back clear of her. He then told George Farnsworth to look, that he could see all of her larboard skylight, at the time

the "Western World" was square across the river or nearly so, his impression was that at the time he was speaking to George Farnsworth, that the "Western World" would hit the "Hill" about the forward ends of the boilers or hatch, but in consequence of the "Hill" receding so fast, the "Western World" struck the "Hill" on the starboard side of her stem. Immediately after the collision he stopped the larboard engine, and went ahead on it to bring the "Hill" along side of the "Western World," as soon as he got her swung around, so as he could come alongside of the "Western World," he stopped the starboard engine, and then went ahead on it, and ran the "Hill" up alongside of the "Western World," and then stopped both engines. Then hollered to Captain Newell to have a line got out quick, so as he could go ahead to keep from drifting aground on the Arkansas bar. He then went ahead on the "Hill" to run the "Western World" over to the Princeton bar, but it was so dark on the Arkansas bar that he could not get over to the Princeton bar. It was so dark that he could not see the bar nor the timber on the bend, until the "Hill" had drifted close into shore below Princeton bar. The collision occurred at about a quarter past four o'clock in the morning, at the foot of the clearing at the high timber on the island No. 89, as specified on the map hereto annexed.

(For map, see original, page 285.)

To respondents' 3d interrogatory (as to facts and circumstances attending the collision)—

Rezin Bell answers. That the collision between the "Hill" and "Western World" took place near the head of island 89 on the Mississippi River, on or about the 14 day of December, 1852; that, in the running, he gave the wheel up to his partner at the foot of Princeton bar; he then went below to go to bed; he remained in the hall a few minutes before he layed down; about five minutes after he layed down, he heard some steamboat tap a single bell; immediately after the tap of the bell, the motion of the "Hill" stopped, when the "Hill" answered by two taps of her bell. He heard the bells ring to ship up for backing. He ran out of his room at the time to see what was the matter; when he got on the hurricane roof, the "Western World" gave a second signal of one tap, when he heard the engine bells of the "Hill" to back; that the "Western World" was then lying square, or nearly so, heading for the "Hill's" side. He then took an observation of the river, but it was so dark that he could not see anything but the point ahead, where there was a light on, or above the point. He at that time could see the whole larboard skylight of the "Western World." The "Hill" was backing hard from the tap of the "Western World's" second bell until the collision.

To respondents' 3d interrogatory (as to facts and circumstances attending the collision)—

Ichabod T. Hill answers. That the collision occurred near the

head of island 89, close to the Arkansas bar. The collision occurred on or about the 14 day of December, 1852, at about half past four o'clock A. M.

John Morgan Smith answers. That he does not know anything in reference to the collision (except that, at the time of the collision, he was asleep in the office of the "Hill," which was on the larboard side; he was awoke by the collision; he got up, and looked out the back door of the office; saw nothing, and laid down again, supposing the boat had struck a bar or drift log. He did not go to sleep, and heard, in a short time afterwards, considerable talking, walking, and noise, when he got up, and went out on the starboard side of the cabin, when he saw the "World" considerably careened, and hanging by her starboard guard to the starboard guard of the "Hill." He heard the mate of the "Hill" halloo to the men on the "W. World" to throw her freight off from her bow, when some one on the "World" ordered them not to throw the freight off. The crew and passengers were then leaving the "W. World," and coming into the cabin of the "Hill." He then went into the "Hill's" office, and was immediately followed by Mr. Murphy, clerk of the "W. World," carrying an armful of books, which he asked him to take care of. He then turned to go out, when deponent asked him if he had got his safe out. His reply was, No. He asked Mr. Murphy what was in his safe, and he replied there was no money in it. He then went out of the office of the "Hill," and deponent remained in.

W. H. McNairy answers. That it was a dark night, and drizzling rain. (Omit.)

Joseph Edwards answers. That he was asleep, and does not know. (Omit.)

Robert Graham answers. The collision took place about a quarter past four o'clock in the morning of December, 1852, in the Mississippi River, and nearly opposite Princeton, Missi., near the head of the island on the Arkansas shore.

To respondents' 3d interrogatory (as to facts and circumstances attending the collision)—

George W. Farnsworth answers. That the collision occurred on or about the morning of the 14th of December, 1852, near the head of the island 89 in the Mississippi River; that, before the collision, the "Hill" was running up the bar of island 89, and as close to the bar as she could run with safety. The "Hill" was headed for the light of a steamboat that showed across the point outside of a small bunch of timber. He then saw the light of another boat coming around the point, which proved to be the "Western World;" and when her light showed between the starboard derrick and chimney of the "Hill," the "World" rang one bell. The moment she rang her bell, Captain Gerard, the pilot of the "Hill," stopped both engines, and then rang two bells; immediately after which, he rang the bells to ship up for backing; at this time, the "Western World,"

head of island 89, close to the Arkansas bar. The collision occurred on or about the 14 day of December, 1852, at about half past four o'clock A. M.

John Morgan Smith answers. That he does not know anything in reference to the collision (except that, at the time of the collision, he was asleep in the office of the "Hill," which was on the larboard side; he was awoke by the collision; he got up, and looked out the back door of the office; saw nothing, and laid down again, supposing the boat had struck a bar or drift log. He did not go to sleep, and heard, in a short time afterwards, considerable talking, walking, and noise, when he got up, and went out on the starboard side of the cabin, when he saw the "World" considerably careened, and hanging by her starboard guard to the starboard guard of the "Hill." He heard the mate of the "Hill" halloo to the men on the "W. World" to throw her freight off from her bow, when some one on the "World" ordered them not to throw the freight off. The crew and passengers were then leaving the "W. World," and coming into the cabin of the "Hill." He then went into the "Hill's" office, and was immediately followed by Mr. Murphy, clerk of the "W. World," carrying an armful of books, which he asked him to take care of. He then turned to go out, when deponent asked him if he had got his safe out. His reply was, No. He asked Mr. Murphy what was in his safe, and he replied there was no money in it. He then went out of the office of the "Hill," and deponent remained in.

W. H. McNairy answers. That it was a dark night, and drizzling rain. (Omit.)

Joseph Edwards answers. That he was asleep, and does not know. (Omit.)

Robert Graham answers. The collision took place about a quarter past four o'clock in the morning of December, 1852, in the Mississippi River, and nearly opposite Princeton, Missi., near the head of the island on the Arkansas shore.

To respondents' 3d interrogatory (as to facts and circumstances attending the collision)—

George W. Farnsworth answers. That the collision occurred on or about the morning of the 14th of December, 1852, near the head of the island 89 in the Mississippi River; that, before the collision, the "Hill" was running up the bar of island 89, and as close to the bar as she could run with safety. The "Hill" was headed for the light of a steamboat that showed across the point outside of a small bunch of timber. He then saw the light of another boat coming around the point, which proved to be the "Western World;" and when her light showed between the starboard derrick and chimney of the "Hill," the "World" rang one bell. The moment she rang her bell, Captain Gerard, the pilot of the "Hill," stopped both engines, and then rang two bells; immediately after which, he rang the bells to ship up for backing; at this time, the "Western World,"

was behind the starboard chimney of the "Hill;" at this time, the "Western World" again rang one bell to back the starboard engine (which was immediately done), and told me to help him give her the wheel hard over, so as the "Western World" could pass to the right of the "Hill," or, if she did hit the "Hill," that she might hit her in the head. Gerard started the larboard engine to backing, and then said to the engineer to back her hard. The engineer answered that she had it all. When the "Hill" had backed so that the light of the "W. World" showed on the starboard derrick of the "Hill," Gerard then said to him to look, that he could see all the larboard skylight of the "World;" and, when the "World" struck the "Hill," she, the "World," was lying square across the river.

Respondents' 4th interrogatory. How long before the collision did you see the "Western World?" What was her position with respect to the "Hill" when you first saw her? Was she nearer to the Arkansas or to the Mississippi shore? Was the "Hill" nearest to the Arkansas or Mississippi shore?

W. H. Gerard answers. That to the best of his belief, it was not more than five minutes from the first time he saw the "Western World" until the collision took place, and not over more than two minutes and a half from the time the "Western World" rang her first bell until the collision took place; that when he was first able to discover the position of the "Western World" she was nearly square across the river, coming towards the "Hill," as though she would strike her starboard side; she was nearer to the Arkansas shore and close in on the Arkansas bar, and immediately between the "W. World" and the Arkansas bar.

To respondents' 4th interrogatory, Rezin Bell answers. That he does not know the exact time, but it was a very few minutes; the position of the "W. World" when he first saw her, was heading square, or nearly so, for the starboard side of the "Hill;" the "W. World" was the nearest to the Arkansas shore; the "Hill" was nearest to the Arkansas shore, and was between the "W. World" and the Arkansas shore.

Ichabod T. Hill answers. That he saw her about fifteen minutes before the collision, when he first saw her she was above the Arkansas point, at the head of 89, and showed to the larboard side of the "Hill," after passing the point she showed on the starboard side of the "Hill;" the "W. World" was nearest to the Arkansas shore; the "Hill" was nearest the Arkansas shore, and running close to the island bar of No. 89.

John Morgan Smith answers. That he did not see the "W. World" at all before the collision.

W. H. McNairy answers. That his attention was first called to the "W. World" by a fellow passenger named McCarty, coming to him at the stove in the forward part of the cabin of the "Hill," saying to him that he, McNairy, had better get ready to get off, as another boat was about running into our boat. (Omit.)

Joseph Edwards answers. That he did not see the "World" at all, from the fact that he did not get up; he was sleeping in the after end of the gentlemen's cabin, and the collision waked him, when he lay awake for two minutes, when he thought there was not much the matter, and then went to sleep. (Omit.)

To respondents' 4th interrogatory, Robert Graham answers. He first saw the "Western World" about three minutes before the collision; at that time she appeared to be coming square across the river, from the Mississippi shore; the "World" was nearer to the Arkansas shore than to the Mississippi shore; the "Hill" was nearest the Arkansas shore, and between the "Western World" and the Arkansas shore.

George W. Farnsworth answers. That it was about five minutes from the first time he saw the "World" until the collision occurred; the "World" was coming around the point when he first saw her, and immediately afterwards she, the "World," turned square across the river. The "World" was nearest to the Arkansas shore, and the "Hill" was between her and the Arkansas shore.

Respondents' 5th interrogatory. Describe as accurately as you can the relative position of the two boats from the time you first saw the "Western World" until the collision occurred, also what signals, if any, were given, by which boat given, how they were responded to, and particularly what manœuvring on the one part and the other, you observed up to the moment of the collision.

W. H. Gerard answers. That he has answered this interrogatory in his response to the third.

Rezin Bell answers. That the "Hill" was heading up the Arkansas point. The "Western World" was heading square across the river, or nearly so, heading in for the "Hill." The "Western World" gave the first signal by a single tap of her bell, meaning that she intended to run the bar side of the "Hill," when the "Hill" responded with two taps of her bell, to show that she was running the bar side. The "Western World" again gave a single tap of her bell, when the "Hill" commenced backing, and continued to back up to the time of the collision. On the part of the "Western World" he noticed no manœuvring except she continued her course towards the "Hill."

Ichabod T. Hill answers. That the "Western World" was, when he first saw her, holding straight down the river, and continued that course until she had passed the point, when she turned in for the Arkansas bar, and continued that course until the collision took place. When he first saw the "Western World" the "Hill" had just crossed over to the Arkansas bar, when she kept up close to the bar until the collision occurred. He could tell the position of the boats with certainty from the lights on the point. The "Western World" gave the first signal by one tap, which was answered by two taps from the "Hill." The "Western World" repeated the single tap, which was not answered by the "Hill" at the first signal from

the "Western World;" the "Hill" was stopped, and immediately after answering the signal was shipped up for backing. At this time he heard the one tap repeated by the "W. World," and the engine bells of the "Hill" immediately rang to back, all of which took place in a minute. That at the time of the "W. World's" first tap of her bell she appeared to be rounding to, and at the second tap of her bell she was square across the river, or nearly so, headed directly for the "Hill." He says, from the position he occupied between the chimney and derrick on the hurricane roof, he thought that the "Western World" would strike right under him, but from the "Hill's" receding so fast she did not strike the "Hill" until she got to her stem.

To respondents' 5th interrogatory. John Morgan Smith answers. That he does not know anything in relation to this interrogatory.

W. H. McNairy answers. He went upon the guard of the "Hill" before the collision took place. At the time he got out on the guard the "Hill" was headed up the river, and the "W. World" was coming directly across the river towards the "Hill," and he thought the "World" would strike the "Hill" at the boilers, but did not strike until she struck the stem of the "Hill," owing to the "Hill's" receding. (Omit.)

Joseph Edwards answers. That he did not go on the guards at all. He knows nothing relative to the position of the two boats. (Omit.)

Robert Graham answers. That the "Western World" was coming square across the river when he first saw her, and continued in that course until the collision occurred. The "Hill" was running up close to the Island bar on the Arkansas side, and appeared to me straight up to the point. The "Western World" gave first signal of one tap, the "Hill" answered by two taps. The "World" again gave one tap immediately before the collision. The "Hill" did not answer the second time. The "Hill" was stopped at the first signal from the "World," and backed at the second signal. The "Western World" came straight on, and the "Hill" did not change her position, being headed for the point.

George W. Farnsworth answers. The "Hill" was running close to the Arkansas bar for a light of some steamboat that was going up which showed across the point, and continued in that course until stopped by Gerard. Just at the time of the collision the head of the "Hill" was pointed out a little (as shown in the map) in order to keep the "World" from hitting the "Hill" in the side. The "Western World" came around the point and squared herself for the Arkansas shore. The "Western World" gave the signal by one bell, the "Hill" answered by two bells. The "World" again tapped one bell, which was not answered by the "Hill," as the collision took place immediately afterwards.

Respondents' 6th interrogatory. Where was the "Hill" bound? Where was her proper channel—was it near the Arkansas shore or

the Mississippi shore? Where was the "Western World" bound? Where was her proper channel—was it near the Arkansas or Mississippi shore?

W. H. Gerard answers. That the "H. R. W. Hill" was bound for Nashville. That the proper channel of the "Hill" was around the Arkansas bar, as specified by line drawn on the map. That the channel was nearest the Arkansas shore. That he presumes she (the "W. W.") was bound for New Orleans. That where the collision took place, proper channel of the "W. World" was in the middle of the river, between Princeton bar and Island 89.

Rezin Bell answers. That the "H. R. W. Hill" was bound for Nashville. The proper channel of the "Hill" was close around the Island bar of No. 89, as specified on the map. The channel of the "Hill" was nearest the Arkansas shore. He believes the "World" was bound for New Orleans. The proper channel of the "Western World" was closest to the Princeton bar, as shown on the map, and considerably to the right of the "Hill's" course ascending the river, but does not know which State the channel was nearest to.

To respondents' 6th interrogatory Ichabod T. Hill answers. The "H. R. W. Hill" was bound for Nashville. Her proper channel was close around the bar of 89, and closer to the Arkansas than to the Mississippi shore. The "Western World," he believes, was bound for New Orleans. Her channel was nearly the middle of the river. He does not know which shore the channel is nearest to.

W. H. McNairy answers. That the "Western World" was nearer to the Arkansas shore, or left hand shore. The "Hill" was nearer to the Arkansas than Mississippi shore, and between the "Western World" and Arkansas shore. (Omit.)

Joseph Edwards answers. He does not know. (Omit.)

Robert Graham answers. That the "Hill" was bound for Nashville, Tennessee. Her proper channel was close to the Island bar; her channel was close to the Arkansas shore. The "Western World" was bound for new Orleans, La. Her channel was nearly in the middle of the river, about equal distance from each side.

To respondents' 6th interrogatory, Geo. W. Farnsworth answers. That the "Hill" was bound for Nashville. Her proper channel was close to the island in Arkansas bar, and nearer the Arkansas shore. The "Western World," he supposes, bound for New Orleans. The proper channel of the "World" was nearly in the middle of the river, about an equal distance from each shore.

John Morgan Smith answers. The "Hill was bound for Nashville. He does not know the proper channel of either boat. The "Western World" was bound for New Orleans.

Respondents' 7th interrogatory. Describe as accurately as you can the shape and character of the river at the place where the collision occurred, and annex to your deposition a diagram showing the course of the two boats, the shape of the river, the down-stream and up-stream channels, the exact point at which the collision occurred, and the position of the two boats at the time they came together.

W. H. Gerard answers. That the map annexed to this deposition is a correct description of the shape of the river at the place of the collision. The character of the river is bad of a dark night, and the map also shows the position of the two boats at the time of the collision.

Rezin Bell answers. That the map annexed to this deposition is a correct description of the shape of the river, at the place where the collision occurred. He considers the navigation of the river at that point extremely bad on a dark night, owing to the width of the river and difficulty of seeing marks more particularly for a down stream boat, heavily laden. The map is also correct as to the up stream and down stream channels, the point at which the collision occurred and also the place of the boats.

Ichabod T. Hill, answers. That the map annexed to this deposition is correct, and shows the correct course of the up and down stream boat, also the position of the two boats at the time of the collision. The navigation at this point is dangerous of a dark night, especially for a down stream boat, heavily laden.

To respondents' 7th interrogatory, John Morgan Smith answers. He knows nothing in relation to this interrogatory.

W. H. McNairy answers. That he heard signals, but does not know by which boat given, nor how often. (Omit.)

Joseph Edwards answers. He heard no signal, and knows nothing further in answer to the 7th. (Omit.)

Robert Graham answers. The diagram annexed shows the course of the two boats, the shape of the river, and the up and down stream channels, and also the place at which the collision occurred; he thinks the "Hill" was headed straighter up the river than specified on the said map, and that she was headed for the point. The river changes frequently in the neighborhood of the place of the collision.

George W. Farnsworth answers. That the diagram annexed to this deposition is a correct description of the shape of the river, the down stream and up stream channels, and the position of the two boats at the time of the collision; that, owing to the width of the river at that point, the navigation is bad of a dark night.

Respondents' 8th interrogatory.—Eighth. Which boat struck the other? On which side, and on what part was the boat struck which received the blow? On which side, and with what part did the boat strike which gave the blow? What effect was produced on each boat by the blow?

W. H. Gerard answers. That the "Western World" struck the "Hill" on the starboard side of her stem. The "Western World" struck with her stem. That the effect produced by the collision was that the bow of the "Western World" was stove in and split the stem of the "Hill."

Rezin Bell answers. That the "Western World" struck the "Hill;" the "Hill" was struck on the starboard side of her stem;

the "W. World" struck with her stem; he says the "Hill's" stem was split by the collision; the only effect produced on her; the stem of the "W. World" was stove in.

Ichabod T. Hill answers. The "W. World" struck the "Hill" on the starboard side of her stem; the "W. World" struck with her stem; the "Hill's" stem was split on the starboard side, which caused her to leak a little; the stem of the "Western World" was knocked in.

John Morgan Smith answers. That he does not know.

W. H. McNairy answers. That he cannot tell whether the engines of the "Western World" were in motion or not. (Omit.)

Joseph Edwards answers. He does not know. (Omit.)

To respondents' 8th interrogatory, Robert Graham answers. The "W. World" struck the "Hill" on the starboard side of the stem. The "W. World" struck with her stem and bow; the bow of the "W. World" was mashed in, causing her to sink; the stem of the "Hill" was split open, and the stem band knocked to one side.

George W. Farnsworth answers. That the "World" struck the "Hill" on the starboard side of the "Hill's" stem; the "World" struck with her stem; the "Western World" had her bow knocked in, and sunk afterwards; and the "Hill's" stem was split.

Respondents' 9th interrogatory. Was the "Hill" advancing towards or receding from the "W. World" at the time the collision occurred?

W. H. Gerard answers. That the "Hill" was receding.

Rezin Bell answers. That the "Hill" was receding from the "Western World" at the time of the collision.

Ichabod T. Hill answers. The "Hill" was receding from the "W. World;" that the reason he knows the "Hill" was receding is that, when he was standing between the chimney and derrick, he supposed the "World" would hit the "Hill" about where he stood; but, owing to the "Hill's" receding so fast, she did not strike the "Hill" until she struck her stem.

John Morgan Smith answers. He does not know.

To respondents' 9th interrogatory, W. H. McNairy answers. That the engines of the "Hill" were backing when he first saw the "Western World." He does not know at what time the engines were stopped.

Joseph Edwards answers. He does not know anything.

Robert Graham answers. The "Hill" was receding from the "World" at the time of the collision, and was going down the river; her engine was backing.

George W. Farnsworth answers. The "Hill" was receding from the "Western World" at the time of the collision.

Respondents' 10th interrogatory. After the collision, were the two boats separated? If so, how far did they get apart? did or not the "Hill" approach the "W. World" after the collision? If she did, how long after? and did she go up or down the river to reach the "Western World"?

W. H. Gerard answers. That they were; that they got apart about forty or fifty yards. The "Hill" did approach the "W. World" after the collision, and as soon as the engines could be stopped, and went ahead on; that the "Hill" went up the river to reach the "W. World."

Rezin Bell answers. That, after the collision, the two boats were separated; the two boats were apart about fifty or sixty yards; the "Hill" did approach the "W. World" after the collision. He says that, as soon as the engines of the "Hill" could be reversed, the "Hill" went up stream to reach the "W. World."

Ichabod T. Hill answers. The boats were separated. He supposes they were apart some thirty or forty yards. The "Hill" approached the "World" as soon as the "Hill" could stop her engines, and reverse them. She went alongside of the "World." She went quartering up stream.

John Morgan Smith answers. He cannot say from his own knowledge.

W. H. McNairy answers. That, when he first saw the "Western World," he could see the left-hand shore, or Arkansas shore, but could not see the other shore. The bow of the "Hill" was pointed up stream; the bow of the "W. World" was pointed towards the "Hill" and Arkansas shore, square across the river. (Omit.)

Joseph Edwards answers. He does not know. (Omit.)

Robert Graham answers. The boats were separated after the collision, about forty or fifty yards. The "Hill" approached the "W. World" immediately after the collision. The "Hill" went up the river to reach the "World."

George W. Farnsworth answers. That, after the collision, the two boats were separated about 40 or 50 yards. The "Hill" approached the "Western World" as soon as her engines could be stopped, and went ahead on. The "Hill" went up the river to reach the "Western World."

Respondents' 11th interrogatory. Did or not the officers of the "W. World" come on board the "Hill" after the collision? If so, how long after? was any officers of the "W. World" intoxicated at the time? If so, state what officer. What conduct did you observe on the part of the officers of the "W. World" after the collision? State particularly what you did observe, and give the names and capacity of the officers (of the "Western World") whose conduct attracted your attention.

W. H. Gerard answers. That the officers of the "World" did come aboard of the "Hill" after the collision; he does not know how long after; he does not know; he says the officers appeared to be very indifferent, and did not seem to care about the collision; he observed them playing cards, each having a glass of liquor; he does not know any of the names of the officers, nor their capacities, except Sam. Fletcher, one of the pilots.

Rezin Bell answers. That the officers of the "Western World"

came on board the "Hill" after the collision; after the collision they came aboard as soon as the "Hill" got alongside; he does not know whether any officers were intoxicated or not; the officers of the "Western World" did not seem to care much about the collision; he noticed them playing cards and drinking on the "Hill" on her trip up; he does not know their names nor capacity.

Ichabod T. Hill answers. The officers of the "World" came on board the "Hill" immediately after she had got alongside; he does not know of any of the officers being intoxicated, but knows of some who came aboard drunk; but cannot say as to their being officers; he knows that some of the officers, pilots, engineers, and clerk were gambling and drinking nearly every night during the trip; he does not know their names.

John Morgan Smith answers. The officers came aboard in a very short time after the collision; he does not know that any of the officers were intoxicated, but at the time they came on board, he observed them immediately drinking at the bar; those that were at the bar drinking, were Fletcher, the pilot, Murphy, the clerk, and Curtis, the engineer, and others of the crew whose names he does not know, all of the "W. World;" the names of the officers, together with his own, were handed to him by Fulton, the acting captain of the "World;" he noticed some of the officers of the "Western World" sitting at a table playing cards for money, and drinking.

To respondents' 11th interrogatory, Robert Graham answers. The officers of the "World" came on board of the "Hill" just as soon as the boats got alongside; Samuel Fletcher, the pilot of the "World," seemed to be under the influence of liquor when he came on the "Hill;" he did not take any particular notice of them afterwards.

George W. Farnsworth answers. That the officers of the "World" came on board the "Hill" as soon as she got alongside; he does not know that any of the officers were intoxicated at that time; the officers of the "World" seemed to be very indifferent as regarded the collision; he observed all of the officers playing cards and drinking (except the acting captain and clerk, who he only saw drinking;) he does not know any of their names except the two pilots, Sam. Fletcher and Dan. Bloyce, or a name very similar.

Respondents' 12th interrogatory. Did you hear any conversation between the captain of the "Hill" and any of the officers of the "Western World" immediately after the collision? If so, state what was said on the one part and the other. Did you have any conversation with any of the officers of the "W. World" after the collision? If so, with what officers, and state fully the conversation?

W. H. Gerard answers. That he did hear a conversation; that he heard the captain of the "Hill" exclaim, "Captain, if you have got any passengers, for God Almighty's sake go and wake them up," and heard a response from the "World," God damn you, or God damn it, 'tend to your own boat; captain answered and said that

would be attended to in a proper time, sir; the captain of the "Hill" also hollered to them to throw a tarpaulin over the bow of the "W. World," and to throw the freight off of the bow; he heard some person on the "Western World," appearing to have authority, say, don't you throw the freight off; he did have some conversation with Sam. Fletcher; he called Fletcher into the pilot house and said to him as soon as he heard the bell of the "W. World" ring once, he knew there was something wrong about her; he told Fletcher that he immediately stopped the "Hill's" engines, and at the time he heard the "World's" second signal, he commenced backing on the starboard engine of the "Hill;" Fletcher stopped him in his conversation by saying he was at the wheel, he was at the wheel; and she the ("W. World") was so deep and heavy he could not manage her, and was insured for twenty thousand dollars; he says a conversation ensued afterwards at the breakfast table, in which he asked Fletcher how he came to come over into the "Hill" the way he did, he (Fletcher) said she, the "World" was so big and heavy that he could not manage her, that she was insured for twenty thousand dollars; he had no conversation with any other of the officers of the "World" respecting the collision.

To respondents' 12th interrogatory, Rezin Bell answers. That he did not hear any conversation between Captain Newell, of the "Hill" and any of the officers, immediately after the collision. He did not have any conversation with any of the officers of the "World" in reference to the accident.

To respondents' 12th interrogatory, Ichabod T. Hill answers. He heard a conversation between the captain of the "Hill" and some person who appeared to have authority on the "W. World." Capt. Newell said to throw a tarpaulin over the bow of the boat of the "W. World," and throw that freight off the forecastle; some person answered, having authority, and said he would be God damned if he would. The mate Irwin, of the "Hill," sent some of the "Hill's" crew over on the "W. World" to roll the freight off of the bow of the "Western World" to light her up, and they were driven back, by some saying, let that freight alone, God damn you. Deponent had a conversation with the watchman of the "World." He asked him where he was at the time of the collision, and was answered that he and the engineer was shipping up the doctor's pump; he said that he had just been down in the hole (before the collision), and the water was up over the dunnage, and also said that when the "W. World" hit the "Hill," he thought she had run over a big log, or hit the bank. The watchman said the "World" had struck something once before that night.

John Morgan Smith answers. He did not hear any conversation between the captain of the "Hill" and any of the officers of the "World." He had no conversation with any of the officers except Mr. Murphy, the clerk, which has been mentioned in 3d interrogatory.

Robert Graham answers. That he did not hear any conversation between the captain of the "Hill" and officers of the "World," nor did affiant have any conversation with any of the officers of the "World," about the collision.

George W. Farnsworth answers. That he heard the captain of the "H. R. W. Hill" say to the officers of the "Western World," if they wanted him to come alongside. They answered they wanted him to come alongside, that they were sinking. The captain of the "Hill" then told them to throw the freight off of her bow. When some person on the "World," seeming to have authority, ordered it not to be done. He had no conversation with any of the officers of the "World" in reference to the collision.

Respondents' 13th interrogatory. The libellant in this case claims damages for the sinking of the "Western World" in a collision with the "H. R. W. Hill," which he alleges was the result of the negligence and improper conduct of the officers of the "Hill;" and he also charges that no fault, imprudence, or negligence on the part of the officers and crew of the "W. World" contributed to the collision. State fully all that you know tending to prove what is the truth with regard to the statements as particularly as if thereunto especially interrogated. The libellant also claims $2,100—amount of money which he says was in the safe of the "W. World" at the time of the collision, and which he alleges was lost. State anything you may know in reference to this charge, and fully your means of knowing what you do state. And state also any facts you may know in reference to the character of the night and of the weather, the stage of water, the condition of the two boats, and of the officers and crew, tending to show upon whom the fault of the collision rests.

(Signed) HUNTON & BRADFORD,
and
" MARR & ROBERTS,
for Respondents.

W. H. Gerard answers. That no fault, imprudence, or negligence could be attributed to the officers of the "Hill." That she was properly managed as any steamboat could be under the circumstances, and that she was in her right place. That the cause of the collision was owing entirely to the bad management and negligence on the part of the officers of the "Western World."

That the "Western World" gave the wrong signal for a down stream boat. That she left the course she ought to have pursued, and came square across the river, or nearly so. He says it was the duty of the pilot of the "Western World" to have struck two bells, and have gone over towards Princeton bar; had he have done so, he would not have known what boat the "Hill" was that night. He knows nothing in relation to the $2,100 in the safe. He says the night was too dark for a down stream boat to run with safety, and was drizzling rain. That it was a low stage of water. The "West-

ern World" was heavily laden. The "Hill" was in as fine a condition as could be, was strong, sound and staunch, and well manned and equipped, and that he had full control of her with wheel and engines. That from the fragments he saw come out of "Hill's" stem, left there by the "W. World," he judges that she was very rotten. That he knows the officers of the "Hill" to be sober, competent men, and attentive to their business.

To respondents' 13th interrogatory, Rezin Bell answers. That the collision did not take place through any negligence on the part of the officers of the "Hill." He says that the collision was caused solely by the negligence and imprudence of the officers of the "World," and that if they had kept their proper channel, and have given the proper signal, they would not have been in three hundred yards of the "Hill." He knows nothing in reference to the money in the safe. The night was dark and drizzly night, and such a night as no prudent man would run with a heavy loaded down-stream boat. The water was of a low stage. The "Hill" was strong, stout and staunch, and well equipped, and he had all control of her with wheel and engines. The "Western World" was heavy laden. The officers of the "Hill" are all prudent, sober, steady men. He does not know anything of the character or capacity of the officers of the "Western World."

To respondents' 13th interrogatory, Ichabod T. Hill answers. That no fault, imprudence, or negligence on the part of the officers and crew of the "Hill" contributed to the collision. He attributes the sole cause of the collision to the negligence and improper conduct on the part of the officers and crew of the "Western World." He does not know anything in relation to the money said to be in the safe, but that the clerk of the "Western World" had plenty of money next day, and had plenty time to have saved what money was said to have been in the safe. That the night was very dark and rainy, and not a fit night to run for a down-stream boat, especially one heavily laden. The river was of rather a low stage. The "Hill" was only half loaded, she was on her first return trip from New Orleans, and was well manned and equipped in every respect. The "W. World" was an old boat, and very deeply laden. He says as the "W. World" capsized, he saw her forefoot and stem was entirely out of her bow, and appeared to be perfectly rotten, and where her forefoot was appeared to be filled up with blue clay mud, as though it had been out some time. That the watchman of the "World" told him that she was worn out, and that the captain had gone to build a new boat, and at that time the "Western World" was commanded by the clerk. The officers of the "Hill" are all competent, sober men. He knows nothing of the capacity of the officers of the "Western World."

John Morgan Smith answers. He does not know upon whom the blame lies, that all that he knows in relation to the money said to be contained in the safe, has been answered in the 3d interrogatory,

in his conversation with Mr. Murphy; the night was very dark and drizzling rain; the river was rather of a low stage; the "Hill" was not quite half loaded; he does not know the condition of the "W. World;" the officers of the "Hill" were all sober, steady and competent men.

To respondents' 13th interrogatory, Robert Graham answers. The collision was caused by the improper or negligent conduct of the "W. World," and not from any imprudence or negligence of the officers of the "Hill," as had the "Western World" kept her channel, they would not have known what boat the "Hill" was; he knows nothing of the $2,100 said to have been in the chest or safe; the night was cloudy, and drizzling rain at the time of the collision; the river was at rather a low stage; the "World" was loaded deep, and the "Hill" scarcely half loaded; the officers of the "Hill" are all competent, good men, and skilful in their professions; he is not acquainted with the capacity of the officers of the "World."

To respondents' 13th interrogatory, George W. Farnsworth answers. He knows that the "Hill" was in her proper channel for an up stream, and that the "Western World" was not in her proper channel for a down steamboat, and that no fault, imprudence or negligence of the part of the officers and crew of the "Hill" contributed to the collision, but that it was the negligence and improper conduct on the part of the officers of the "World" that caused the collision; he knows nothing in reference to the money said to be in the safe; the night was dark and drizzling rain; the river was at a medium stage; the "Hill" was new, on her first trip and only half laden; the "World" was an old boat and deeply laden; he knows nothing as to the capacity of the officers of the "Western World;" the officers of the "Hill" are competent, sober, steady men.

1st. Libellant's 1st cross-interrogatory. State precisely in what part of the boat you were at the time of and just before the collision. What were you doing? Who was with you?

W. H. Gerard answers. That he was in the pilot-house, steering the "Hill," George W. Farnsworth was with him.

Rezin Bell answers. That at the time and just before the collision he was standing on the hurricane deck, forward of the pilot-house; he was looking at the boats and the shore; there was no person with him.

Ichabod T. Hill answers. That he was on the hurricane deck of the "Hill," between the starboard chimney and derrick; Captain Thomas H. Newell was on the hurricane deck within a few feet of him.

John Morgan Smith answers. That he was at the time and just before the collision, in the office (of the "Hill") asleep; he was asleeping; no person was with him.

Robert Graham answers. At the time of and just before the collision, he was standing on the hurricane deck of the "Hill," along-

side of the pilot-house; he was looking at the "Western World;" there was no person with him.

George Farnsworth answers. That at the time of and just before the collision, he was in the pilot-house with W. H. Gerard, the pilot, and that he assisted him as stated in the 3d direct interrogatory answer.

2d. Libellant's 2d cross-interrogatory. Were you or not alarmed at the collision? were there not much alarm on board? Did you run or leave the place where you were to avoid the danger? State all that occurred with reference to yourself, and what you did at the time of the accident.

W. H. Gerard, answers. That he was not a particle alarmed; there was no alarm on board as he knows of. That he did not run or leave the wheel, that he was at the wheel and doing everything in his power to avoid the collision.

Rezin Bell answers. That he was not much alarmed at the collision; he did not see any person alarmed. He did not run or leave the place until after the collision, when he went below to see what effect was produced on both boats.

To Libellant's 2d cross-interrogatory, John Morgan Smith answers. That he was not alarmed at the collision; he can't say that there was much alarm, owing to the passengers being asleep. He did not run to leave the place to avoid danger, but merely looked out the back door of his office, and then laid down, supposing she had struck a drift log or bar. Soon afterwards he heard loud talking and noise on the starboard side, then got up and went out, when he saw the "Western World" hanging on the starboard guard of the "Hill."

Robert Graham answers. He was not alarmed; he did not see any person alarmed on the "Hill." He did not run away to avoid the danger; at the time of the accident was looking on, and came out of the hall in Texas, from hearing the "World's" signals; he did not leave the place where he stood until after the collision.

George Farnsworth answers. That he was not alarmed at the collision; nor did he see any person alarmed until afterwards; he did not leave the place where he was to avoid the danger. At the time of the accident, he was looking on, and immediately after the collision he went below to ascertain what damage was done to the "Hill."

Ichabod T. Hill answers. That he was not much alarmed at the collision; he did not see any person alarmed. He did run from the place where he was standing because he thought the "W. World" would strike about where he stood, and thereby causing the chimneys to fall. That at the time or immediately after the accident he ran down below to see what damage was done.

3d. Libellant's 3d cross-interrogatory. If you answer what was or ought to have been the proper channel of the two boats; then say what degree of experience have you had in piloting boats, or what

degree of acquaintance with the river at that point to enable you to decide what course the two boats should respectively have taken.

W. H. Gerard answers. That he has been a regular pilot for thirteen years, from Nashville to New Orleans, and was previously on the river six years.

Bezin Bell answers. That he has been a pilot from Nashville to New Orleans for three years, previous to which he was learning the river three years, and has been engaged in other capacities on steamboats for thirteen years previous to his learning the river.

Ichabod T. Hill answers. That he has been a watchman on the river twelve years, and altogether on the river twenty-two years, and that he has a good general knowledge of the river from Nashville to New Orleans.

John Morgan Smith answers. That he does not know the proper channel of either boat.

Robert Graham answers. That he has been on steamboats from Nashville to New Orleans from seventeen years engaged as an engineer; he has never piloted any boat, but has a good general knowledge of the Mississippi River.

George Farnsworth answers. That he has been engaged for the last three years in learning the river from New Orleans to Nashville.

4th. Libellant's 4th cross-interrogatory. Is the course you have designated for ascending and descending boats, uniformly followed; do all pilots follow that course at that point; have you not known exceptions, and in how many instances have the courses marked out by you for ascending and descending boats respectively been departed from? State all the instances within your recollection.

W. H. Gerard answers. That it has been for eight or ten years and is now; that, if they knew their business, they would; he has never known any exceptions at that stage of water, unless a boat had business at Princeton; he knows of no departures.

Rezin Bell answers. That the courses designated on the map for both up and down stream boats has been uniformly followed for the last eight years; he believes that all pilots who do right follow the courses designated on the map; he never knew any departures from the courses laid down.

Ichabod T. Hill answers. The course designated on the map has been uniformly followed, since the bar made on the Princeton side; he believes that all pilots follow that course, all that he has been with have done so.

John Morgan Smith answers. That he has not pointed out any channel.

Robert Graham answers. That at the time of the collision he thinks that all boats follow that course, that he does not recollect any boat that did not follow that course up stream unless she had business at Princeton, and that all boats have followed the course down stream designated on the map, for several years.

George W. Farnsworth answers. That the course designated on

the map, has been uniformly followed since he has been on the river. He does not know of any exception.

5th. Libellant's 5th cross-interrogatory. How far was the "World" from you when you first saw her lights? on which side of the line of direction of the "Hill" did the lights of the "World" then appear?

W. H. Gerard answers. That the night was so dark he does not know; that the lights of the "World" showed on the starboard.

Rezin Bell answers. That when he first saw the lights of the "W. World," he supposes that she was about a hundred yards from the "Hill;" the lights of the "W. World" showed on the "Hill's" starboard side.

Ichabod T. Hill answers. That he supposes it was two miles; he says the "Western World's" lights showed on the larboard side of the "Hill."

To libellant's 5th cross-interrogatory, John Morgan Smith answers. That when he first saw the "World" she was alongside of the "Hill," as answered in the 2d cross-interrogatory.

Robert Graham answers. The "World" was about one hundred yards off when he first saw her; the "W. World" was on the starboard side of the "Hill," he could see all the larboard skylight of the "World."

George W. Farnsworth answers. That owing to the darkness of the night, he cannot tell how far the "W. World" was from the "Hill;" the lights of the "W. World" showed on the starboard side of the "Hill."

6th. Libellant's 6th cross-interrogatory. How many persons were in the pilot-house of the "Hill," and who were they? how many on the hurricane deck on watch, and who were they, at the time of the collision?

W. H. Gerard answers. That George Farnsworth and himself were the only persons in the pilot-house at the time; the captain (Thomas H. Newell) and the watchman (Ichabod Hill) were the only persons on watch on the hurricane deck at the time of the collision.

Rezin Bell answers. That he knows that W. H. Gerard was in the pilot-house, and believes that George Farnsworth was also there; Thomas H. Newell, captain, and Ichabod Hill, watchman of the "Hill," were on the hurricane deck at the time of the collision on watch.

To libellant's 6th cross-interrogatory, Ichabod T. Hill answers. That W. H. Gerard and George Farnsworth were in the pilot-house at the time of the collision and before; he says that Thomas H. Newell, master, and himself were on the hurricane deck and on watch.

John Morgan Smith answers. That he cannot answer either question.

Robert Graham answers. That Captain Gerard and George Farnsworth were in the pilot house of the "Hill;" that he heard Captain

Thomas H. Newell on the hurricane deck of the "Hill," it was so dark he could not see any person on the hurricane deck sufficiently to distinguish them.

George Farnsworth answers. That there was no person in the pilot-house of the "Hill" except W. H. Gerard and himself; that Captain Thomas H. Newell and Ichabod T. Hill, watchman, were the only persons on watch on the hurricane deck at the time of the collision.

7th. Libellant's 7th cross-interrogatory. Did not the World give the first signal by a single tap of the bell? Did not the Hill answer by giving two taps? Did not the World repeat the signal tap? Was it not answered again by two taps. State all that occurred in reference to the signals and answers? How long a time elapsed between the first and second signal given by the World?

W. H. Gerard answers. That the World did give the first signal by one tap of her bell; the Hill answered by giving two taps of her bell; the World repeated the single tap; that it was not answered by the Hill the second time; that he has stated all that occurred with reference to signals and answers; not more than a minute elapsed between the signals of the Western World.

To libellant's 7th cross-interrogatory, Rezin Bell answers. That the World gave the first signal by a single tap of her bell; he says the Hill answered by giving two taps; the World did repeat the single tap; he does not know of its being answered by the Hill; he has stated all that occurred in reference to signals and answers; he does not know what time elapsed, it was very short.

Ichabod T. Hill answers. That the World did give the first signal by a single tap of her bell; the Hill did answer by giving two taps; the World repeated the single tap; it was not answered by two taps, nor at all; he has stated in this interrogatory all relative to the signals and answers; it was not over a minute.

John Morgan Smith answers. That he does not know anything in reference to signals and answers.

To libellant's 7th cross-interrogatory, Robert Graham answers. That the World gave the first signal of one tap; the Hill answered by two taps; the World repeated one tap; he did not hear the Hill answer the second time; he thinks about two minutes elapsed between the first and second signals of the World.

George W. Farnsworth answers. The W. World did give the first signal by a single tap of her bell; the Hill answered by giving two taps; the World repeated the single tap; it was not answered by the Hill; about one or two minutes elapsed between the first and second signals of the World.

8th. Libellant's 8th cross-interrogatory. If you have stated the manœuvring of the boats prior to the collision, then say whether you have done so entirely from your own recollection of the facts, or partly from inference, information of others, or conversation occurring afterwards.

W. H. Gerard answers. That the facts stated in the foregoing answer, in reference to the collision and manœuvring of the two boats, before and after the accident, are all from his own knowledge.

Rezin Bell answers. That he has stated nothing except what he knows himself.

Ichabod T. Hill answers. That he has stated nothing except from his own knowledge.

John Morgan Smith answers. That he does not know anything in reference to the collision of the two boats, or their manœuvring prior to the collision.

Robert Graham answers. That he has stated nothing except from his own recollection.

George W. Farnsworth answers. He has stated nothing except from his own knowledge.

9th. Libellant's 9th cross-interrogatory. If you say that the Hill stopped and backed her engines before the collision, then state as accurately as you can, how long it was before the collision that she stopped, and how long before was it that she backed. Did she stop before answering the signal of the World, or after, and how long after?

W. H. Gerard answers. That as soon as the World gave the first signal he stopped the Hill's engines. That at the second signal of the World he backed the Hill. That the Hill stopped before answering the signal of the World.

Rezin Bell answers. That the Hill stopped before answering the first signal of the World, and that she backed at the second signal of the World. It was two or three minutes from the time the Hill stopped until the collision took place, and she had been backing one or two minutes before they came together.

Ichabod T. Hill answers. That the Hill stopped immediately after the first signal from the World, and before answering it, and backed at the second signal.

To libellant's 9th cross-interrogatory, John Morgan Smith answers. He knows nothing in reference to this interrogatory.

Robert Graham answers. That the Hill was stopped immediately after the first signal; he cannot say whether the Hill stopped before answering the Western World's signal.

George W. Farnsworth answers. That he does not know the time. The Hill stopped immediately after the first signal of the World, and before answering it; and she was backed at the second signal of the World.

10th. Libellant's 10th cross-interrogatory. Look at the annexed copy of a letter from E. D. Farnsworth and J. Wilson, of Nashville, to Captain D. Embree, of St. Louis, dated January 4th, 1853. Did you make to the writers of said letter or either of them, any statement about the circumstances of the collision? Does the said letter correctly state the circumstances as communicated by yourself, and

if it does not, then state what corrections you desire to make in the same?

Letter referred to.

Nashville, Jan'y 4th, 1853.

Captain D. Embree,

Dear Sir: Yours of the 20th ult'o is at hand and contents noticed. We have made a good deal of inquiry into the cause, &c., of the collision of the Western World and H. R. W. Hill; from the best and most reliable information we get we are satisfied that the Western World was decidedly out of her proper channel, and the Hill was right where she should be, viz: that she was coming up close around the bar at Princeton (or below there). The World was going down and was running from the opposite side directly towards the bar which the Hill was coming around. The Hill, when satisfied the World was coming towards her, gave the signals and rec'd reverse answers; the Hill then stopped her engines and commenced backing, and was going backwards fast; seeing the World would strike her on the side she stopped one engine and straightened up, so as to "give her the bow to hit, as she must hit her some place;" and had she not "struck the Hill she would, undoubtedly, have sunk herself on the bar." It is the impression of all on the Hill that the World did not stop her engines until after they came together. Capt. Newell (who it is needless to say is one of the best and most prudent and most competent boatman on our waters) was on deck during all the affair, and before they came together. Captain Gerard was at the wheel at the time, and is confident the World was mistaken. Captain Gerard is, without doubt in every respect, one of the most competent men, skilful in his profession, and is, and always has been, a perfect sober, attentive, and good man; no man can say aught against him. He has been piloting since 1836, without intermission. He learned under Mr. Henry Wolfe. He has commanded some boats and always been piloting, and we have no hesitation in saying that anything he does or says can be relied on with implicit confidence. Captain Gerard had no license at the time, but from his character, and what we have heard on investigation of the collision aforesaid, we should not hesitate a moment to grant him a license were he to apply to us. The writer of this, E. D. Farnsworth, has made inquiries of passengers who came on the Hill in regard to the collision, some of whom say the crew of the World were all, or some of them, under the influence of liquor, and that the pilot of her and other officers were all playing cards ("poker") in an hour after the collision, and seemed to manifest a total indifference of the unhappy disaster. You speak of a legal investigation of the matter under the new law—can that be done, the law not being in force at the time of the disaster; we would, of course, like to see the thing in its true light, and the guilty or faulty one brought out, at the same time knowing where it occurred and what we do of its bearings and the unlimited confidence of our-

selves as well as the community who are acquainted with Captain Gerard, as also Capt. Newell in them. We are decidedly of the opinion that there was a mistake on the part of the World to run the bar side of the river in the night going down stream, and in such a place as which the collision occurred.

We will at all times be pleased to assist you in any investigation or otherwise, and should be pleased to learn from you whether the inspectors at your place have granted license to the pilot on watch of the World at the time of the collision. We are told here that Mr. Samuel Fletcher was on watch at the wheel of the W. World. We close by saying that our information is derived from the officers and passengers of the H. R. W. Hill.

Very respectfully yours, &c.,

(Signed) E. D. FARNSWORTH,

(Signed) JOHN WILSON,

Local Inspectors, Nashville, Tennessee.

To libellant's 10th cross-interrogatory, W. H. Gerard answers. That he has examined the letter purporting to be a copy of an original, written by E. D. Farnsworth and John Wilson to Captain D. Embry, marked exhibit "B," and hereto annexed, and says that he had no communication with either of them on the subject therein contained, nor in anywise instrumental in having it written.

Rezin Bell answers. That he has read the letter purporting to be a copy of an original written by E. D. Farnsworth and John Wilson to Capt. D. Embree, marked exhibit "B," and hereto annexed, and says that he had no communication with either of them on the subject therein contained, nor in anywise instrumental in having it written.

Ichabod T. Hill answers. That he has examined the letter said to be a copy of an original written by E. D. Farnsworth and John Wilson to Capt. D. Embree, of St. Louis, marked exhibit "B," and hereunto annexed; that he has had no communication with either of them on the subject therein contained, and was in no way instrumental in having it written.

John Morgan Smith answers. That he made no statement to either E. D. Farnsworth or John Wilson in reference to the collision.

Robert Graham answers. He never made any statement to either E. D. Farnsworth or John Wilson in reference to the collision.

George W. Farnsworth answers. That he has examined the letter purporting to be a copy of an original written by E. D. Farnsworth and John Wilson to D. Embree, of St. Louis, marked exhibit "B," and says that he had no communication with either of them on the subject, nor was he in any way instrumental in having it written.

11th. Libellant's 11th cross-interrogatory. If, in answer to the 11th direct interrogatory, you speak of the conduct of any officers or the crew of the World, then state precisely who is the person or persons to whom you allude. How many of them were there? how

did you know them to be the officers of the World? If you speak of the crew, how did you know them from the crew of the Hill? If any of them were intoxicated, then state whether they did not drink after coming on board of the Hill. Were not some of the officers and crew of the Hill also drinking?

W. H. Gerard answers. That he alludes to the officers in general, but does not know their names; he only knew that they were officers from their own acknowledgments to him; he does not recollect how many; he says that, if any officers of the World were intoxicated, he does not know it; that none of the engineers nor mates on the Hill drink at all.

Rezin Bell answers. That he alludes to the officers in general; there were five or six; he only knows that they were officers by their own say so to him. There were none of the crew of the Hill drinking.

Ichabod T. Hill answers. That he does not know the names of any of the parties alluded to in his response to the 11th direct. There were some five or six. He only knows that they were officers from their own acknowledgment, that none of the officers of the Hill were drinking.

John Morgan Smith answers. That he has stated fully the conduct and names of all the officers he knew in the 11th interrogatory direct. None of the officers of the Hill were drinking.

Robert Graham answers. He believes nearly all officers of the World came on board the Hill—he only knew them to be officers of the World from their own statements. He first saw Mr. Fletcher in the Texas, and had not seen him drink any on the Hill. There were none of the officers of the Hill drinking. They are all temperate men.

George Farnsworth answers. He alludes to all the officers except the captain and clerk. He knew them to be officers from their own acknowledgments. They drank after coming on board of the Hill. There was none of the officers of the Hill drinking.

12th. Libellant's 12th cross-interrogatory. If in answer to the 12 int'y you speak of any conversation with the captain of the World, then say how long had you known him prior to that time? How do you know that he was the captain? Who else was present and heard the conversation? Have you detailed the whole conversation on both sides? Are you certain that you have stated just the substance of what was said? Is it not possible that you may have misunderstood or have heard the conversation imperfectly.

W. H. Gerard answers. That the person with whom the conversation was held by the captain of the Hill was not known to deponent, nor does he know the captain of the World. He does not know whether any person was present or not. He has detailed all that he has heard on both sides. He has stated the substance of the conversation explicitly, as he understood it, and it is not probable that he misunderstood it, for he heard it plain.

Rezin Bell answers. That he heard no conversation, nor had any, with the officers of the World.

Ichabod T. Hill answers. That he does not know who answered the captain of the Hill, but it was some one who appeared to have command. He knows of no one that heard the conversation except Captain Newell of the Hill and himself. He is certain that he stated all the substance of the conversations.

John Morgan Smith answers. That he had no conversation with the captain of the Western World in relation to the collision, and heard none.

Robert Graham answers. He heard no such conversation.

George Farnsworth answers. That he does not know that the person on the Western World who answered the captain of the Hill was master of her. He is certain that he has detailed fully the substance of the conversation on both sides.

13th. Libellant's 13th cross-interrogatory. Have you interest either direct or indirect in this suit, and what interest have you? Have you, or had you not, at the time of the collision, a share or interest in the Hill, either in your own name, or in the name of others?

W. H. Gerard answers. That he never owned any interest, nor does he now, either in his own nor any other person's name.

Rezin Bell answers. That he had no interest at the time, neither in his name, or in any person else's, nor has any now, either in this suit, or the H. R. W. Hill.

Ichabod T. Hill answers. That he has no interest, either direct or indirect, in this suit, and that he did not have at the time of the collision, nor has he now any share or interest in the Hill, either in his own name or that of others.

To libellant's 13th cross-interrogatory, John Morgan Smith answers. That he has no interest in this suit, that he did not have, nor has he now any interest in the Hill.

Robert Graham answers. He has no interest either direct or indirect in this suit; he had no interest in the Hill at the time of the collision, nor has he any now.

Geo. Farnsworth answers. That he has no interest in this suit, nor had not at the time of the collision, or now any interest in the Hill in his own name or any other.

14th. Libellant's 14th cross-interrogatory. If there is any fact within your knowledge tending to show that the Hill was in fault, in part or entirely, or that tend to excuse the World from fault, state the same fully and particularly.

(Signed) BENJAMIN & MICOU, Att'ys.

W. H. Gerard answers. That he knows of no fact that would tend to inculpate the Hill, or exculpate the World.

(Signed) W. H. GERARD.

Rezin Bell answers. That he does not know any fact tending to show that the Hill was in fault, either in part or entire, or that would excuse the Western World.

(Signed) REZIN BELL.

Ichabod T. Hill answers. That he does not know of any fact tending to show that the Hill was in fault, or that would excuse the World. (Signed) ICHABOD T. HILL.

John Morgan Smith answers. He does not know which boat was in fault. (Signed) JOHN MORGAN SMITH.

Robert Graham answers. He does not know anything tending to show that the Hill was in fault, or that would excuse the Western World from blame. (Signed) ROBERT GRAHAM.

Geo. Farnsworth answers. He does not know anything to show that the Hill was in fault, or that tends to excuse the World.

(Signed) GEO. FARNSWORTH.

(Deposition of W. H. McNairy, and Joseph Edward, for claim't & respond't.)

1st. Respondent's 1st interrogatory. State your age, residence, and occupation.

W. H. McNairy answers. That his age is thirty-eight years, he resides in Nashville, his occupation that of a farmer.

Joseph Edwards answers. That he is thirty-seven years old, he resides in Nashville, his occupation a grocer.

2d. Respondent's 2d interrogatory. Were you or not on board the H. R. W. Hill as a passenger in the month of December last, when a collision took place between the Hill and the Western World? If yea, state as near as you can at what time and at what place the collision took place.

W. H. McNairy answers. That he was on the Hill when a collision took place between her and the Western World on the day of December last, between three o'clock and daylight. The collision took place in the Mississippi River, but he does not from his own knowledge know the exact point.

Joseph Edwards answers. That he was on board the Hill when a collision took place between her and the World. That as to time and place he does not know.

3d. Respondent's 3d interrogatory. State what was the character of the weather, and what was the character of the night, whether a dark night, moonlight or starlight night, at time the collision occurred.

W. H. McNairy answers. That it was a dark night and drizzling rain.

Joseph Edwards answers. That he was asleep and does not know.

4th. Respondent's 4th interrogatory. When was your attention

first called to the position of the World? State also what fact or circumstance directed your attention to her, and in what part of the boat you were at that time?

W. H. McNairy answers. That his attention was first called to the Western World by a fellow passenger, named McCarty, coming to him at the stove in the forward part of the cabin of the Hill, saying to him that he, McNairy, had better get ready to get off, as another boat was about running into our boat.

Joseph Edwards answers. That he did not see the World at all, from the fact that he did not get up; he was sleeping in the after end of the gentlemen's cabin, and the collision waked him, when he lay for ten minutes, when he thought there was not much the matter then went to sleep.

5th. Respondent's 5th interrogatory. Did you or not go out upon the guards of the Hill before the collision? If so, state what was then the relative position of the two boats, and their respective positions down to the moment of the collision.

W. H. McNairy answers. He went on the guard of the Hill before the collision took place; at the time he got out on the guard the Hill was headed up the river, and the Western World was coming directly across the river towards the Hill, and he thought the World would strike the Hill at the boilers, but did not strike until she struck the stem of the Hill, owing to the Hill's receding.

Joseph Edwards answers. That he did not go on the guards at all; he knows nothing relative to the two boats.

6th. Respondent's 6th interrogatory. When you first saw the W. World was she nearer to the Arkansas or to the Mississippi shore? Was the Hill at that time nearer to the Arkansas shore or the Mississippi shore?

W. H. McNairy answers. That the Western World was nearer to the left hand shore or Arkansas shore; the Hill was nearer to the Arkansas than the Mississippi shore, and between the Western World and the Arkansas shore.

To respondent's 6th interrogatory Joseph Edwards answers. That he does not know.

7th. Respondent's 7th interrogatory. Before the collision occurred did you or did you not hear any signal made by either of the boats? If so, state what signal you heard, by which of the boats it was given, and whether or not it was responded by the other boat; state also whether or not the signal was repeated, and if so, how often before the collision occurred.

W. H. McNairy answers. That he heard signals but does not know by which boat given nor how often.

Joseph Edwards answers. He heard no signals, and knows nothing further in answer to the 7th interrogatory.

8th. Respondent's 8th interrogatory. State whether or not the engines of the World were in motion when you first saw her; if they

were, was she backing or going ahead? At what time were her engines stopped?

W. H. McCairy answers. That he cannot tell whether the engines of the Western World were in motion or not.

Joseph Edwards answers. That he does not know.

9th. Respondent's 9th interrogatory. Were the engines of the Hill in motion when you first saw the Western World? If so, was she backing or going ahead? At what time were her engines stopped?

W. H. McNairy answers. That the engines of the Hill were backing when he first saw the Western World; he does not know at what time the engines were stopped.

Joseph Edwards answers. That he does not know anything.

10th. Respondent's 10th interrogatory. When you first saw the World could you or not see the Arkansas shore, or the Mississippi shore? State which shore you could see, and whether or not you could see both shores; which way was the bow of the Hill pointed? which way was the bow of the Western World pointed?

W. H. McNairy answers. That when he first saw the Western World he could see the left hand shore, or Arkansas shore, but could not see the other shore. The bow of the H. R. W. Hill was pointed up stream, the bow of the Western World was pointed towards the H. R. W. Hill and Arkansas shore, square across the river.

Joseph Edwards answers. He does not know.

11th. Respondent's 11th interrogatory. How did the two boats come together? which struck the other? on which side, and on what part was the boat struck which received the blow? On which side, with what part did the boat strike which gave the blow? What effect was produced on each boat by the blow?

W. H. McNairy answers. The Western World struck the Hill on the right hand side of her stem. The Western World struck with her stem. The Western World had her bow knocked in; the Hill had her stem split on the right side.

Joseph Edwards answers. In answer to this interrogatory he knows nothing, except the blow was the cause of waking him up.

12th. Respondent's 12th interrogatory. Was the Hill advancing towards or receding from the World at the time the collision occurred?

W. H. McNairy answers. He knows that the Hill was receding, from the fact that he could tell by the timber on the shore.

Joseph Edwards answers. He does not know.

13th. Respondent's 13th interrogatory. After the collision were the boats separated or not? if they were separated, how far did they get apart? Did or not the Hill approach the World after the collision? If she did, did she or not change the pointing of her bow, and did she go up or down the river to reach the Western World?

W. H. McNairy answers. That the boats were separated about fifty yards. The H. R. W. Hill approached the Western World. He does not know that the Hill changed the position of her bow, but he knows that the Hill came alongside of the Western World

and lashed. He does not know whether the Hill went up or down the stream to reach the World.

Joseph Edwards answers. He knows nothing about it.

14th. Respondent's 14th interrogatory. Who had charge as captain of the Western World at the time of the collision? who was at the wheel?

W. H. McNairy answers. That he does not know his name; but was told by a young man that he was acting temporarily as captain from Memphis. He does not know from his own knowledge who was at the wheel, except that Mr. Fletcher told him that he was.

Joseph Edwards answers. That he does not know.

15th. Respondent's 15th interrogatory. Did or not the officers and crew of the World come on board the Hill after the collision? If so, how long after? Was any officer of the World intoxicated at that time? If so, state what officer. What conduct did you observe on the part of the officers of the World after the collision? State particularly what you did observe, and give the name and capacity of the officers whose conduct attracted your attention.

W. H. McNairy answers. He knows all the principal officers of the World came on board of the H. R. W. Hill; they came aboard as soon as the H. R. W. Hill got alongside of the World.

There was some of the officers of the World intoxicated; he says that Mr. Fletcher was, at the time he came on board, evidently intoxicated, also the person he saw bring an arm full of books on the Hill; he saw the officers of the World gambling and drinking, not exceeding two hours after the collision; that there was the captain who did not gamble or drink that he saw, but that the pilot that got his back injured, did play cards and gamble between breakfast and dinner time; he knows that Mr. Fletcher commenced gambling from the first and continued it during the trip; he does not know any of the officers' names except Mr. Fletcher's.

Joseph Edwards answers. Next morning after he got up he found several gentlemen who were said to be the officers of the World, but he cannot say from his own knowledge, having no personal acquaintance with any of them; some of them evidently seemed to have been drinking a short time after he got up, a portion of them were playing cards and drinking, but he cannot say that they were intoxicated, but it seemed to him that they were under the partial influence of what they had been drinking; they were betting money; he does not know their names or their capacity.

16th. Respondent's 16th interrogatory. Were or not any efforts made to save the lives of the persons and the property on board the Western World? If so, state what was done, and by whom.

W. H. McNairy answers. That every effort was used to save the lives and property on the Western World; that every effort was made by the entire officers and crew of the Hill.

Joseph Edwards answers. That he knows nothing.

17th. Respondent's 17th interrogatory. Did or not the captain

or pilot of the World, after the collision? If so, what did he say, and what answer was given?

W. H. McNairy answers. That he heard some one on the Western World hallo to the Hill, to come up alongside of the World, that she was sinking; he heard a response from some one on the hurricane deck of the Hill say aye, aye, he would be there directly, and went alongside as soon as he could; he does not attribute the sinking of the World to any negligence or imprudence on the part of the officers and crew of the Hill; he says that he is personally acquainted with W. H. Gerard, the pilot of the Hill, and knows him to be very prudent man; the Western World was heavily laden, her guards dragging the water. He has stated nothing except from his own knowledge.

Joseph Evans answers. That he knows nothing.

18th. Respondent's 18th interrogatory. (Does not appear to have been propounded to Mr. McNairy.) The libellant in this case claims of the steamboat Hill, $57,000 damages, which he alleges he sustained by the sinking of the Western World in a collision with the Hill. He charges that the collision was the result of the carelessness and improper conduct of the officers of the Hill, and that the officers and crew of the World took every precaution to avoid the collision, and that no fault, imprudence or negligence on the part of her said officers and crew contributed to the collision; state any facts within your knowledge to show what is the truth with regard to these charges, as fully as if thereunto specially interrogated; state also whether or not the Western World was heavily laden, and fully your means of knowing the facts you may state.

HUNTON & BRADFORD.
MARR & ROBERTS,
For Respondents.

Joseph Edwards answers. That he knows nothing about it.

1st. Libellant's 1st cross-interrogatory. Are you now or have you ever been engaged in the navigation of steamboats on the western rivers, and how long were so engaged, and in what capacity?

W. H. McNairy answers. He has not been since he was a youth.

Joseph Edwards answers. That in 1837 or 1838 he was engaged for the season as second clerk.

2d. Libellant's 2d cross-interrogatory. Have you travelled much on steamboats? How often (about) have you been up and down the Mississippi?

W. H. McNairy answers. He has travelled on steamboats a great deal; he does not know how often he has been up and down the Mississippi River.

Joseph Edwards answers. That since the fall of 1841 (with the exception of about two years), he has been to New Orleans at least once a year, sometimes twice.

3d. Libellant's 3d cross-interrogatory. Is it not to your knowledge

that it is difficult for a passenger in the night time to form a correct opinion of the position or direction of the boat he is on or of another in sight from his own observation ?

W. H. McNairy answers. He thinks it is not difficult to form a correct opinion if a person is cool and collected, and *has travelled* as *much* as he has.

Joseph Edwards answers. That he thinks it would be difficult for one to form an opinion when he was asleep !

4th. Libellant's 4th cross-interrogatory. Have you not sometimes been, for a moment, deceived as to the position and direction of your own or another boat in sight in the night-time ? and have you not afterwards convinced of your mistake ? how often has this occurred to you ?

W. H. McNairy answers. He has been deceived when he first commenced travelling in his youth, but has not to the position of the boat he was travelling on, or another, ever been deceived since.

Joseph Edwards answers. That he knows nothing.

5th. Libellant's 5th cross-interrogatory. Is it not to your knowledge that a change in the direction of the boat in which they may be will sometimes produce among passengers the appearance or impression of a change in direction of another boat in sight ?

W. H. McNairy answers. That it might with some passengers, but would not with him, if he was paying attention.

Joseph Edwards answers. That he does not know.

6th. Libellant's 6th cross-interrogatory. On such a night as that on which the collision occurred, is it not possible or probable that you may have been mistaken as to the precise position and direction of the two boats just before the collision ?

W. H. McNairy answers. That he was not mistaken as to the position of the two boats on that night.

Joseph Edwards answers. That he does not know.

7th. Libellant's 7th cross-interrogatory. Were you sensible of the danger of the collision before, and how long before it occurred ? did you run ? or did you use any other and what means to escape the danger ?

W. H. McNairy answers. He was not sensible of a collision until McCarty came and told him, and when he saw the W. World and the way she was pointed towards the Hill, he knew there must be a collision ; he did not run or use any means of escaping the danger.

Joseph Edwards answers. He was not sensible of the danger, for he was asleep, and he used no means to escape danger.

8th. Libellant's 8th cross-interrogatory. In giving your account of the management of the two boats before the collision, have you given only your own impressions, derived from your own recollection of what occurred, or have your impressions been assisted by what was said in conversation after the accident occurred ?

W. H. McNairy answers. That as far as the Hill was managed,

he speaks from his own knowledge, but as regards the management of the World he knows nothing.

Joseph Edwards answers. That he stated nothing but from his own knowledge.

9th. Libellant's 9th cross-interrogatory. State precisely in what part of the boat you were before the collision. What were you doing? How came you to be up at that time of the night? Who was with you? Were you standing or sitting?

W. H. McNairy answers. Before the collision he was seated at the stove, in the forward part of the cabin; he says he was chewing tobacco; it was from his habit of always getting up from an hour to two hours before day; no person was with him; he was sitting.

Joseph Edwards answers. That he was in the after state-room, in the gentlemen's cabin; the collision waked him, but he did not get up, thinking there was no danger; there was no one in his room with him; he was laying down.

10th. Libellant's 10th cross-interrogatory. Did you see the Western World before the collision occurred? If so, how far off was she when you first saw her? In what direction was she? Was she on the right or the left of the line of direction which the Hill was pursuing?

W. H. McNairy answers. That he saw the *saw the* Western World before the collision occurred; he supposes that when he first saw her, she was distant from the Hill about seventy-five or a hundred yards; that the Western World was on the starboard side of the Hill, and coming square cross the river towards the Hill.

Joseph Edwards answers. That he knows nothing.

11th. Libellant's 11th cross-interrogatory. Was there not great confusion and alarm on the collision taking place? Were you not alarmed? Did you not consider yourself in danger?

W. H. McNairy answers. There was a good deal of alarm at the collision taking place; he was a little alarmed; he thought he was in danger until he found the Hill was not hurt much.

Joseph Edwards answers. That he did not consider himself in danger, or he would have got up; he did not hear enough confusion to cause him to get up!!

12th. Libellant's 12th cross-interrogatory. Did not the Western World give the first signal tap on the bell? Was it not answered by two taps? Was not the signal repeated? Was it not answered a second time by two taps?

W. H. McNairy answers. That if the Western World did give the first signal, he did not hear it; that he heard two taps given by the Hill, but does not know that it was in answer to the World; if the signal was repeated, he did not hear it; if the Hill answered again by two taps, he did not hear it.

Joseph Edwards answers. That he does not know.

13th. Libellant's 13th cross-interrogatory. What space of time

intervened between the first and second signal tap heard from the World? How far off was she when the first signal was given?

W. H. McNairy answers. He does not know the space of time that intervened; that he does not know how far off she was, for he was in the cabin as before stated.

Joseph Edwards answers. That he knows nothing.

14th. Libellant's 14th cross-interrogatory. If you say that the motion of the World was continued until the collision, or just before it, then say how you know it to be so. Are you certain of it? Do you know whether she was going forward or backing?

W. H. McNairy answers. That he knows that the motion of the World was continued, from the fact that although the Hill was receding fast, the World hit her; he is very certain of it; he knows that the World was coming towards the Hill, and not backing, or she would not have hit the Hill.

Joseph Edwards answers. That he does not know.

15th. Libellant's 15th cross-interrogatory. If you say that the Hill was backing, then say how you know it to be so. How many revolutions back had she made before the collision?

W. H. McNairy answers. That he knew the Hill was backing, by noticing the trees on shore; which plainly showed to him that the Hill was backing. He does not know how many revolutions she had made.

Joseph Edwards answers. That he knows nothing.

16th. Libellant's 16th cross-interrogatory. If, in answer to the 17th direct, you speak of any conversation to which the captain or pilot of the Western World was a party, then say, which was it; the captain or pilot of the Western World. What was his name?

How do you know he was the captain or pilot of the Western World? Were you acquainted with him, and how long had you known him? Who else was present at the conversation? Have you detailed the whole conversation? If not, what else was said? Are you certain that you have given precisely the substance of what was said?

W. H. McNairy answers. That he did not hear of any conversation of which the captain or pilot were a party, so far as he knows; but he heard a conversation mentioned in the 17th interrogatory direct, but does not know whether it was the captain or the pilot of the World. He does not know who else was present at the conversation. He was not acquainted with the captain of the World. He has detailed all the conversation he heard; there was nothing else said. He is certain that he has given the entire substance as far as he heard it.

Joseph Edwards answers. That he knows nothing.

17th. Libellant's 17th cross-interrogatory. If, in answer to the 15th direct interrogatory, you speak of the conduct of any of the officers or crew of the World after the collision, then state with as much precision as possible, who are the persons to whom you allude?

How many of them were they? In what part of the boat were they at the time? If officers of the World, what officers were they? How did you know them to be so? If a part of the crew, how did you know or distinguish them from the crew of the Hill?

W. H. McNairy answers. That as to the conduct of the officers, he spoke of in the 15th direct interrogatory. He alludes more particularly to Samuel Fletcher, the pilot of the Western World, and the person who came in the cabin of the H. R. W. Hill with an arm-full of books. He says that all of the officers of the Western World who were in the cabin of the H. R. W. Hill, indulged in drinking and gambling, except the captain. They were sitting right at the bar, where they could get liquor handily.

He has stated what officers they were, so far as he knew. He knows them to be so, by their own acknowledgment. From the fact that he knew the officers of the H. R. W. Hill, and has known them for some time.

To libellant's 17th cross-interrogatory, Joseph Edwards answers. He does not know any of the officers personally; but was told they were officers of the Western World. He does not know how many there were. They were in the social hall, close to the bar. The crew of the H. R. W. Hill, he knew.

18th. Libellant's 18th cross-interrogatory. If any one of the persons alluded to were intoxicated, then say who they were. When did you first observe them to be in that condition? Had they not been drinking after coming on board the H. R. W. Hill? Were not some of the officers of the H. R. W. Hill also drinking?

W. H. McNairy answers. That all the officers were intoxicated except the captain, and the pilot that got his back injured; and that Samuel Fletcher was more intoxicated than any one else. He observed Samuel Fletcher as soon as he came on board the H. R. W. Hill, from the fact that he staggered against deponent. The others he observed soon afterwards; they were drinking all the time, after they came on board the Hill. He did not see the officers of the Hill drinking.

Joseph Edwards answers. He does not know who they were. He first observed them after he got up. He only saw them drinking on the H. R. W. Hill. Some of them took a glass, occasionally.

19th. Libellant's 19th cross-interrogatory. If there be any fact within your knowledge tending to show that the H. R. W. Hill or her officers, was or were in fault in producing the collision; state the same as fully as if more specially interrogated.

(Signed) BENJAMIN & MICOU.

The foregoing cross-interrogatories are on file, with a special reservation of exception to the 15th, 16th and 17th interrogatories, as illegal and irrelevant.

(Signed) BENJAMIN & MICOU.

To libellant's 19th cross-interrogatory, W. H. McNairy answers.

He does not believe that the crew or officers were at all in fault, in producing the collision (that is, the crew and officers of the Hill. But he believes that the crew and officers of the Western World were altogether to blame; for it seemed to him to be intentional on the part of the Western World.

(Signed) W. H. McNAIRY.

Joseph Edwards answers. He does not know who was in fault.

(Signed) JOSEPH EDWARDS.

U. S. Dist. Court, Eastern Dist. of La.

ALEX. NORTON,
Owner of Steamboat "Western World,"
vs.
Steamer "H. R. W. HILL" and Master.

In Admiralty.
No. 6853.

Evidence for Respondents.

Deposition of Chas. H. Hatcher, taken by consent, filed Dec'r 6th, 1853, in handwriting of L. Hunton and W. C. Micou, Proctors, offered and read in evidence for claim'ts, 4th Jan'y, 1856.

Chas. H. Hatcher. I reside in Todd County, Kentucky; am a merchant by profession; am not now in business, being about to go to Texas; I was a passenger on the H. R. W. Hill at the time of the collision of that boat with the Western World. I was in my berth at the time of the collision, but had been awoke just before by ringing of the bells. I jumped out a few seconds after the collision; I stepped out on the guards, and the boats were then apart about fifty or sixty yards, and the World 30 or 40 feet to the right. My berth was on the right hand side of the cabin of the H. R. W. Hill. The officers of the Western World came on board the H. R. W. Hill after the collision. I did not know them. I saw the man who said he was the pilot at the wheel; his name was Fletcher, as I was informed. He was a large man. He was familiarly known by the crew of both boats as "Old Sam." I held no particular conversation with him myself, but I observed and heard him converse a good deal, perhaps a half hour, after he came on board. I may have seen him as soon as he came on board, but I suppose it was half an hour before I knew him to be the pilot. He was evidently excited, and I took it to be more or less in liquor. I took it to be that from his manner of conversation, as well as his manner in general.

He spoke of the collision, and remarked that it did not make a "damned cent of difference," or words to that effect. "The World had run four seasons, was insured for more than she was worth, and it was about time she would lose money." I heard the acting captain speak of the collision. The passengers of the Hill were blaming the World; the captain said, "he was on watch and on the bar at the time, and he said that the collision was unavoidable, or inevitable, owing to the darkness of the night;" and if he gave any other reasons, I don't remember them.

Cross-examined.

I think the acting captain was called Fulton; I do not remember hearing his given name. I took him to be a nice gentleman. I never saw him before. I think the passengers of the Hill unanimously were blaming the World for the collision. This opinion was pretty freely expressed; scarcely anything else except the collision was talked of for several days. That opinion was expressed about the time of the statements of the captain and of Fletcher to which I have deposed. I cannot say whether any of the officers of the H. R. W. Hill joined in the conversation to which I have referred. It was more between the officers of the World and the passengers of the Hill, than any other person. I could not say how many persons took part in the conversation, sometimes two or three in parties, and sometimes there were a dozen together in conversation, and the conversations were partly general and excited for an hour at least. I took no more active part in the conversation than others; we all had more or less to say on the subject. I do not recollect some of the names of the Hill passengers; there was Mr. Joseph Edwards, of Nashville, and Mr. McNairy, of the same place, as I believe, the two Mr. Bushes, and a Mr. Pyre, of Sumner County, Tenn., also a Mr. Jennings, of Memphis. I know the faces of others as acquaintances of the trip, but do not recollect other names, except a Mr. Gleives, from near Nashville. I do not think any of these passengers were up or out at the time of the collision. I do not think more than one or two got out sooner than I did. If they were out I did not know it, nor see them, nor did I hear any of them (as I think) say they were out. I suppose they formed their opinion from what they heard after the accident.

The remark that I heard from the acting captain, I think now, was made the day after. The remark of Fletcher was one of the first that I heard from the crew of the World, and he was about the first that I knew as an officer of the "Western World." My best recollection is that it was about half an hour from a quarter to three-quarters after the collision. In excitements of that kind, time is not noted very particularly, and I only give an opinion as to the period. I do not think that it was more than fifteen or twenty minutes elapsed from the collision until all the officers and crew of the World had got upon the Hill. I do not think all of the people had got off the World before she sunk, as some of the families were lost.

After the officers and people had got on the Hill, I think there was some drinking at the bar; I have no question that there was. For a short time there was very little drinking, but after the thing was over, for awhile there was pretty general drinking.

I am personally acquainted with Captain Newell, and have heard he is one of the owners of the Hill. I know Mr. Hamilton, and heard from him that he was one of the owners. I don't know any other owners, and have no connection, either business or otherwise,

with any of them, either those named or others. My first acquaintance with Captain Newell was on that trip.

(Signed) CHAS. H. HUTCHER.

Sworn to and subscribed before me this 30th day of November, 1853.

(Signed) C. M. JOUTE,
Justice of the Peace.

All exceptions to testimony, except of form, reserved.

(Signed) B. M. & FINNEY,
For Libellants.

U. S. Dist. Court, Eastern Dist. of Louisiana.

ALEXANDER NORTON,
Owner of St'mer "Western World,"
vs.
Steamer "H. R. W. HILL" and Master.
} No. 6853. In Admiralty.

Deposition of S. S. Bush for claimants and respondents. Taken under commission of Augt. 2d, 1854, at Sumner County, Tenn., and certified August 16th, 1854, by Wm. Solomon, justice of the peace, on interrogatories and cross-interrogatories.

Offered and read in evidence for claimants 4th January, 1854.

Interrogatories propounded to S. S. Bush.

State your age, residence, and occupation, and how long you have lived at your present place of residence.

Answer to interrogatory 1st. I am 23 years old; live near Gallatin, Sumner County, Tenn.; have resided 17 years, and am a lawyer by profession.

Respondents' second interrogatory. Were you or not on board the Steamboat H. R. W. Hill in the month of December, 1852, when she came in collision with the Steamboat Western World somewhere near Princeton, in Mississippi? If you were on board, state in what capacity, whether as passenger or officer, or one of the crew.

Answer to interrogatory 2d. I was on board the steamboat H. R. W. Hill when she came in collision with the Western World near Princeton, Mississippi, in *in* the capacity of a passenger.

Respondents' third interrogatory. Where were you at the time the collision occurred? Did you see the two boats come together? If you did, state all you know relative to the collision, and how it happened.

Answer to 3d interrogatory. I was asleep in my berth at the time the collision occurred, and know nothing of the circumstances which occasioned it. I was not awakened until a short time before the Western World *careened.*

Respondents' 4th interrogatory. Did you or not observe the condition and the conduct of the officers of the Western World when

they came on board the H. R. W. Hill after the collision? If you did, state what was the conduct which you observed, and what was the condition of the said officers. State also how long this was after the collision, and give the names and capacity of the officers whose conduct and condition you observed.

Respondents' 5th interrogatory. Was there or was there not any officer of the Western World intoxicated at the time they came on board the Hill? If you say there was any officer intoxicated at that time, give his name and capacity, or describe him as nearly as you can.

Answer to 4th and 5th interrogatories. I observed the condition and conduct of the officers of the Western World as closely as one would be expected to do who would make inquiry into the cause of such a catastrophe. My opinion is that the pilot, whose name I believe was Fletcher, was badly intoxicated, at least he appeared so to me. I do not recollect to have seen the officer of the Western World on the Hill until about the time, or perhaps a short time before, the destruction of the former boat. I did not observe any other officer particularly, save the 1st clerk, I think it was, of the W. World, who, if I remember correctly, was acting in the capacity of captain. I think him the only one who could be said to have been free from intoxication. I saw the pilot drink after he came on board the Hill; his time, with that of most of the crew of the World, was occupied for several hours after they came on board the Hill in drinking and card playing. The pilot (Fletcher) did not seem to be at all affected by the disaster.

Respondents' 6th interrogatory. Were or were not any efforts made to save the passengers and the property on board the Western World? If any such efforts were made, state by whom they were made.

Respondents' 7th interrogatory. State whether or not you observed the conduct of the officers of the H. R. W. Hill before, and at the time, and after the collision, and their condition. If you did observe their conduct and condition, state what you observed, at the time mentioned.

S. S. Bush, answer to 6th and 7th interrogatories. As far as I could discover, the officers of the Hill made use of every endeavor consistent with prudence and safety, to save the passengers of the World. The officers of the Hill I regarded as prudent, sober, discreet men, at least I saw nothing that would induce a contrary opinion. I thought the efforts of Captain Newell and other officers of his crew to save the persons and property of the World were worthy of commendation. I do not now remember any particular incident or incidents that would establish their claim to praise. I only allude to their conduct generally.

Respondents' 8th interrogatory. This suit is brought by the owner of the Western World to recover damages caused by her sinking in consequence of a collision with the steamboat H. R. W. Hill, which

he charges occurred without any fault on the part of the officers and crew of the Western World, solely by the fault and improper conduct of the officers of the Hill. State any fact within your knowledge going to show what is the truth as to this charge, as fully as if thereunto specially interrogated.

(Signed) R. H. MARR,
Of Counsel for Respondents.

Answer to 8th interrogatory. I did not see all that occurred after the collision, but from all that occurred under my observation, I do not think that any blame whatever could be attached to the officers of the Hill; on the contrary, the apparent recklessness and drunken condition of the officers of the World induce me to believe that the calamity was occasioned by the imprudence or wicked design of the latter.

The libellants reserving all exceptions, propound only the following cross-interrogatories to S. S. Bush.

Libellant's 1st cross-interrogatory. In what capacity were you on the H. R. W. Hill, as passengers, or as one of the officers or crew? Are you, or were you interested at the time of the collision in the H. R. W. Hill in any manner? If yea, how, and to what extent? Are you now in the employ of the Hill or its owners? If yea, how?

Answer of S. S. Bush, 1st cross-interrogatory. I was on the Hill as a passenger. I was not, nor have I at any time had any interest in the Hill whatever, nor have I ever been in its employ, nor that of its owners.

Libellant's 2d cross-interrogatory. Where were you at the time of the collision and just before the collision? What were you doing? If you say you were awake at the time of the collision, please state how you came to be awake.

Answer to 2d cross-interrogatory. At the time of the collision, and just before, I was asleep in my state room.

Libellant's 3d cross-interrogatory. If you say you were awake at the time of the collision, please state whether you had been asleep that night. How long before the collision did you awake? Where were you when you first the Western World? How far distant was she when you first saw her? Did you see her skylights before the collision, on which side of her did you see her skylights? What part of the World first came in contact with the Hill? Describe particularly. When you first saw the Western World, in which side of the line of direction of Hill did the lights of the World appear?

S. S. Bush's answer to 3d cross-interrogatory. I did not see the World until a moment before she careened. I did not see her skylights before the collision. I do not now remember the exact positions of the World and the Hill after the collision. I do not recollect on which side of the line of direction of the Hill I first saw the lights of the World appear.

Libellant's 4th cross-interrogatory. At the moment of collision, or when you first got out so that you see where you were, could you see the Arkansas bar? Could you see the Princeton bar or the Princeton shore? Could you see any objects on either bar? If yea, what? Did you see any object on the Princeton bar? If yea, what? What was the distance from the Princeton bar? What the distance from the Arkansas bar when you first got out so that you could see? What was the character of the night; could you see pretty well?

S. S. Bush's answer to 4th cross-interrogatory. I do not remember that I noticed the shore of Arkansas or Mississippi. I do not remember to have observed any objects on either shore, nor do I recollect our position as to either. The night was rather dark, but I could easily distinguish objects upon the World at the time of the disaster.

Libellant's 5th cross-interrogatory. After the collision, and the Hill had come alongside of the World, in what direction did the two boats lie? How did the bow of the Hill point, and how did the bow of the Western World point? Did you see any flat-boat that night near the place of collision? How near the flat-boat did the Hill pass? Did the flat-boat, to your knowledge, cause the Hill to change her course?

Answer to 5th cross-interrogatory. I know nothing definitely as I have said of the direction in which the two boats laid after the collision, having taken no notice of it at the time. I saw no flat-boat during the time attended to, nor afterwards. The World, when I saw her, was on the right of the Hill with her bow pointed to the stern of the Hill.

Libellant's 6th cross-interrogatory. Did you know any of the officers of the World? If yea, how long have you known them? In speaking of the officers of the World, do you speak from your own knowledge or from impressions derived from conversations with others? Have you had conversation with any persons concerning the testimony you are to give, or in relation to that testimony? If yea, with whom?

(Signed) BENJAMIN & FINNEY.

Answer to 6th cross-interrogatory. I have never known any of the officers of the World, personally. In speaking of them, I am confined, of course, to what I saw at the time of the collision spoken of. I had a conversation with Mr. Farnsworth some months since relative to this disaster; he then said to me they would probably want my deposition.

(Signed) S. S. BUSH.

U. S. Dist. Court, Eastern Dist. of Louisiana.

ALEX. NORTON
vs.
Steamer H. R. W. HILL and Master. } No. 6853. In Admiralty.

Evidence of Respondents.

Deposition of Aug. R. Whistler, in handwriting of R. H. Marr and John Finney, Proctors, taken by consent, rec'd open, and filed May 16, 1854. Offered and read in evidence for claimant and respondent 4th January, 1856.

Augustus R. Whistler. I was on board the steamboat H. R. W. Hill, in December, 1852, in the capacity of 2d engineer, when she came in collision with the Western World. I was on watch at the time of the collision. Had been on watch some fifteen or twenty minutes. It was the four o'clock watch.

I had been on watch as I have said some fifteen or twenty minutes, had started out forward to regulate the firemen. I got to the forward end of the boilers when I heard one big bell ring. I then turned around and saw a light, supposed it to be a steamboat on our starboard side. I then started to go back to the engine-room. When I got to the forward end of the cylinder timber both engine bells rang to stop. Both engines were immediately stopped, and both bells rang immediately to check the wheels up. This is always done preparatory to backing. Both wheels of the Hill were checked up, and the engines were still waiting for another bell. I then looked around to see what the boat was doing, for I was by this time satisfied it was a steamboat. I saw that she was coming directly towards us, and supposed she would hit us about the middle of the boilers. My engine bell then rang to back. I mean the starboard engine at which I always stood when on watch. I started her back, and at the same time the pilot hallooed down to me to back her strong. I told him she had it all. I meant she was backing with all the steam we had. I then looked out to see what the other boat was doing, for I felt uneasy about the boilers, but I found that we had gone back from where I expected her to come in, and I thought it probable she would miss us. The larboard engine was started back about that time. The boats then came together, the two steam together. The Hill was struck on the starboard side. From the length of time the engines of the Hill had been stopped previous to backing, and the length of time she had been backing, I should suppose her headway had been stopped. When I am standing at an engine, and backing it, I can very readily tell whether the boat is moving back or not. I could see nothing to judge by, but from the working of the engine I judge she was moving back at the time of the collision.

We were going up stream and the Mississippi shore was on our starboard side; I did not see the Mississippi shore at the time of the accident, nor until some time after. The night was very dark from

the time I came on watch until the time of the accident; I do not know whether it had rained during the night; I was not up from twelve until four; I did not know where we were, nor how we were running, as I had not been up long enough to know, but I know we had not much steam. It is usually the case in changing watches that the steam gets down; I know that the steam was down, we can always tell by the steam gauge within a pound of what steam we are carrying; I know, too, we must have running very slow, for we had been running after the Illinois all night, and next morning, after leaving the wreck of the Western World, we soon caught and passed her.

I never left the engine, and know nothing more about the collision, except that I heard our mate say to the people on the Western World, why don't you throw a tarpaulin over your bow; I heard no reply, it was very evident to me they made no exertions to save her; I judge from a remark I heard one of the engineers of the World make; two of them met at my engine; one said to the other, calling him by name, Were you scared? he answered "Yes, I was that;" the other said, Did you ship up the bilge pump? he answered, I undertook to ship one up, but got tangled with it and concluded it was too hot there for me; they then left; this was a very few minutes after the collision; I don't think it was more than five minutes; I know I was astonished to see them at my engine so soon, and I was satisfied they were not attending to their duty, and that they had not done all they could do to save the boat.

When I first saw the light of the Western World, she was about a quarter of a mile off, not farther; I cannot tell how she was coming at that time, I merely saw her light on our starboard side; I do not think she was farther than a width of herself off when we commenced backing; she was coming towards us head on at that time; when she struck the two boats nearly formed a square; I cannot say what length of time elapsed between the time I left the forward part of the boilers and the time the two boats came together; I was handling the engine and my mind was on that; I think we had made between six and eight revolutions back on the starboard engine when the two boats came together; I cannot say how many revolutions were made with the larboard engine; I know the bell rang and it backed before we came together; it is my belief that the Hill was going back at the time of the collision; I have said that the World was not more than the width of herself from us when we commenced backing; but my position was not such as to enable me to judge of the distance, and I was occupied with the engine; a person standing on the hurricane deck would be able to form a much more correct estimate, or one who was not occupied with something else.

I heard but one conversation between the officers of the Hill and the officers of the World; this was between our pilot, Captain Gerard, and Mr. Fletcher, the pilot of the World, at the breakfast

table, in Texas, where the officers of the boat ate the morning of the collision; Thomas Connelly, George Farnsworth and myself were present, I believe the second mate of the Hill was somewhere in Texas at the same time, but I am not positive; Captain Gerard asked Mr. Fletcher how in the world did it happen that you came into me the way you did? Mr. Fletcher answered she was big and heavy, and hard to manage, and she was insured for twenty thousand dollars; the conversation dropped then, and we all went to eating.

I examined the bow of the Hill on her next trip down here, to ascertain the nature of the injury she had sustained; my attention was called to it by the carpenter; I found that the stem of the Hill was split and knocked over to the larboard side, and the stem band bent over to the larboard; I was told that *that* there was a piece of plank from the Western World that had run into our starboard side; I did not see it until after it had been taken out; the injury was on the starboard side.

I think it was near daylight when we left the wreck of the Western World.

The way the Hill was running that night it would take but a very little while to check her headway; she checks very quick; she has a tremendous large wheel; when the wheels are checked up for backing, that is a very heavy drag, and would very soon check the headway of a boat.

From the position in which I was standing I could not have seen the Western World if she had been on our larboard side; my striker, who was standing at the larboard engine, did not know what happened until I told him; the Hill was as well manned and equipped as any boat on the western waters; there was not an officer on her at that time that drank even a moderate glass of liquor; as far as my judgment goes, they were skilful in their various departments; I had no opportunity to observe the conduct of the officers of the World; I remember saying that Mr. Fletcher was either drunk or a fool, to make the remark he did about the boat being heavy and hard to manage, and insured for twenty thousand dollars.

The Hill's engines worked admirably at that time; it was her first trip up; her engines handled very well, they backed quick and went ahead quick.

Cross examined.

I am employed on the H. R. W. Hill at this time; Thomas Connolly was at the larboard engines at the time of the collision; I have not and had not at the time of the collision any interest in the H. R. W. Hill; I had gone forward to regulate the firemen, and heard our signal bell—I cannot say whether one or two taps; this was a signal bell, and called my attention to the light; I then returned to my engine, and heard the bell to stop; I don't recollect that I heard the big bell afterwards; when I saw the light as I had gone for-

ward to regulate the firemen, I could not tell that it was a boat; after I had stopped the engine and prepared to back, when I next saw the World, I then knew it was a steamboat; I was then standing right by the starboard engine; some time elapsed then before I commenced to back, not very long however.

This was the first trip the boat had made that season; she was a new boat, and this was her first trip down; the conversation to which I have referred as having occurred between Mr. Fletcher and Mr. Gerard occurred at the breakfast-table the same table; what I said about Mr. Fletcher being drunk or fool was not said to him but to the boy, Thomas Connelly, that stood watch with me after I went to work; this was my own opinion, and that was the reason I said it; I thought he was either drunk or a fool from the answer which he made to Capt. Gerard's question, how he came into us the way he did; I suppose the World was about sixty feet wide; I cannot tell how many revolutions our boat could make after the World came within sixty feet of us, because I think our boat was backing, and I don't know how fast the other boat was running.

In chief resumed.

It is just forty feet from the forward end of the boilers back to the cylinder timbers; I walked back at a moderate walk; I stopped the engine as soon as I got back there; I checked up for backing as soon as I could do it.

The bells rang as fast as I could handle the engine—they ring two bells; I can't say what length of time elapsed between the ringing of the first and second bells for backing; I think it is about sixty-five feet from the place where I thought the World would strike us to the stem where she did strike; I could not tell whether the World was coming fast or slow, for I had nothing to go by, I could not see the shore.

I do not think we were forty feet from the World after the collision, but it is impossible for me to tell, as I was standing at the engine; after we struck we were still backing and backed for a few revolutions; both engines were immediately reversed and we went ahead on both for three or four revolutions; the starboard engine was stopped, it was then stopped, the larboard engine *engine* was stopped; we were then alongside; we went to her on her starboard side, the two starboard sides together; we continued in that position until we left the wreck; the larboard engine was then started ahead and worked for some time, and occasionally the starboard; we had a line fastened to the World; when she careened, she hooked on to a knee on our starboard side; remained in that position until as we thought every person was off from her, when she was cut loose.

I did not remain at all at the forward part of the boilers when I heard our signal bell; my duty called me back and I started immediately; from the time I got back to the engine I did not leave it until after we let go the World.

I have no idea of the time that elapsed between the time I shipped up for backing and the time I commenced backing; I thought the World was going to strike us about the boilers, and my interest and duty called me at the engine, and I gave my whole attention to it; if the Hill had been going ahead at the time I shipped up for backing, the World would have hit us somewhere between the boilers and the blacksmith's shop; that depends on how the World was going; if the World had been backing she could not have hit us; about the time we commenced backing, I saw the whole broadside of the World, she was nearly square with us when we came together; we could not move sideways, and it is evident that if the World had been going back we could not have come together.

(Signed) AUGUSTUS R. WHISTLER.

Sworn to and subscribed before me, New Orleans, 19th April, 1854. (Signed) L. M. GAINNIE,
First Justice of the Peace.

Testimony taken by consent, objections to form waived, all other objections reserved.

(Signed) BENJAMIN, BRADFORD & FINNEY.

U. S. District Court, East. Dist. of Louisiana.

ALEXANDER NORTON
vs.
Steamer "H. R. W. HILL." } In Admiralty. No. 6853.

Evidence for Respondents.

Deposition of Moses Irwin, filed July 22d, 1854. Taken at New Orleans, La., May 12th, 1854, before, and certified by, United States Commissioner, Marcellus A. Foute.

Offered and read in evidence for claimants and respondents, January 4th, 1856.

Witness, Moses Irwin, being first duly sworn, deposes and says—

I was on board the steamboat H. R. W. Hill, in the capacity of mate, when she came in collision with the steamboat Western World; I witnessed the collision; about 4 o'clock in the morning of the collision, in the first trip of the Hill up, I was lying in my berth, having been unwell the night before; I had been awake for some time previous; I heard the pilot tap the bell twice, I thought for the larboard lead at the time, until I heard the bell again tapped, and then heard the engine bells ring immediately to stop; the backing bells were then immediately rang to back.

My berth was on the starboard, up in what they call "Texas;" my berth was right immediately under the pilot house, where the pilot was standing.

I came out from my berth on hearing the bells ringing to back; before coming out I heard Captain Gerard, who was piloting the Hill, remark, "What do the plagued fools mean?"

When I came out on the roof I saw the Western World coming quartering towards the Hill's starboard side; about the time I was in the act of going down the steps, the two boats came together; I ran over as fast as I could and got in the forecastle, thinking that the Hill was injured, from the way the boats had come together; I found, after getting into the forecastle, that we were not leaking; I then came on deck, and they hollered from the Western World that they were sinking, to come alongside; we were then a little below her; when I heard them cry they were sinking, I told them to put a tarpaulin over the bow of their boat; I thought by that means they might save her, not knowing how much she was injured.

We got alongside of her as soon as we could, threw a line to her and made it fast; I threw the line myself; when we got alongside, I sent some of my men to throw some freight from her head, to lighten her; some one cried out from on board the World, not to throw anything over; I do not know who it was who so cried out; a bale of hay had been thrown over; I then called for the men to come back aboard the boat (Hill) again.

The Western World careened, listed over, and, I thought, was going to turn over; in righting up again she (the Western World) caught on the starboard knee of the Hill, and on the starboard guard of the World; by this means the two boats were held together for a considerable time; I thought that by much strain on it, the guard of the Hill would be injured, so I set some men, with axes, to cutting the nosing and facing of the guard away; as soon as the boats were cut apart, the Western World turned over; we then had the line cut away, and we backed away from her; the Hill had been running slow pretty much all night; it was a dark, drizzly night, rainy; about the time they came in collision, there was a little fall on the water.

It was raining at the time I first got out of my berth.

I think, from the light on the Arkansas shore, we were nearest that shore (the Arkansas) at the time of the collision.

As near as I could judge, the World's bow struck on the Hill's starboard bow; the Hill's stem was split, and had to be taken out and a new one put in; I can't say for what distance it was split.

On our return to New Orleans, upon inspecting the Hill's stem, I was with the inspectors, and they found a piece of plank in the crack of the stem; it was on the starboard side of the Hill.

One of the pilots of the Western World complained of having his back strained; I do not know his name; it was not Mr. Fletcher; I am slightly acquainted with Mr. Fletcher; I heard a conversation, on the morning of the collision, between the officers of both boats, at the breakfast table. (Objected to as being conversation.)

The conversation was concerning the Western World and her running, and her trip down; that they had made remarkable good time down, and had passed several boats during the night.

During this conversation, Captain Gerard asked if the World was insured; some person remarked that she was insured for $20,000; some person remarked (I do not know who, whether an officer of the Western World I can't say positively), then she was very well sold; Mr. Fletcher was at the table at the time; the way I know Mr. Fletcher was at the table, he said to me, "You are the biggest man aboard of the boat, I have lost all of my clothes, and I will have to call on you for a shirt."

There was no moon, and it was black, cloudy weather, when I came out of my berth before the collision.

I do not know whether the engines of the World were in motion at the time of the collision.

The Hill was as well fitted up for the voyage as any boat need be. She had plenty of everything, and was was well rigged. She had a full complement of officers, and, I think, good ones. We had been together two seasons, and had never had any accident before.

Cross-examination waived.

(Signed) MOSES IRWIN.

Sworn to and subscribed before me this 12th day of May, A. D. 1854.

(Signed) MARCELLUS A. FOUTE,
U. S. Comm'r.

U. S. District Court, Eastern District of Louisiana.

ALEX. NORTON
vs.
Stmr. H. R. W. HILL and Master. } In Admiralty. No. 6853.

Evidence for Respondents.

No. 3. Deposition of James Angell; opened and filed 25th June, 1855; taken at New Orleans, La., on the 11th day of July, 1854, before and certified United States Commissioner Marcellus A. Foute; offered and read in evidence for claimants and respondents, 4th January, 1856.

And the said James Angell, being first duly sworn, deposes and says:—

I was engaged in wrecking the steamboat Western World. I went to her about 28th January, 1853. I was not with the first bell-boat that went to the wreck. The Dolphin went ahead of us. I was in the employ of Capt. Matthews.

At the time we went to the wreck, she was under water about twenty feet; we waited there until she came out of water before we did anything to her.

When the water fell from the boat, she was bottom upwards, and her stem knocked out the whole length of it down to where it joined on to the keel. I saw no other injury to the boat. I was at the wreck until we got all the freight out of her. There was about four

feet water in her bow when I left. I was down in the bow of the wreck. I can't tell whether the bow was stove in or not; it was open. I left the wreck about 1st September, in the bell-boat. During the time I was there, the wreck was not out of water, except the stern, which was entirely out. The bow had about four feet of water.

Capt. Matthews left the wreck at the same time I did. We had finished wrecking the boat when we left.

I follow diving by occupation. I have been so engaged for upwards of ten years.

I did not notice any particular damage about the World, more than her stem knocked out.

She was rather too much under water to have seen any injury low down on her side, as there was about four feet water under her bow. I was there all the time they were at work at the wreck.

Captain Matthews had no better opportunities of observing the condition of the boat than I had. He may have noticed more particularly. I did not notice very particularly. Captain Matthews did not go down into the hull of the wreck at all. In getting the freight out, I was at work in all parts of the hull.

I did not observe that any part had been cut into before she was sunk.

There was no place to be perceived where a boat had cut into the hull, out of water, no more than her stem knocked out. She had been cut into by wreckers.

The wreckers had cut into her about midships on her bottom. This cutting into her bottom was done by people who lived a-shore, before Matthews went there.

Cross-examined.

I have been in nobody's employ since I left the bell-boat. I have had rheumatism all the time. I left the bell-boat when she was calaboosed. She was calaboosed for sinking a flat-boat. The flat-boat which she sunk was at the head of Morgan's Bend. I was pilot at the wheel of the bell-boat at the time. I gave my deposition in that case.

I said the stem of the W. World was knocked out. I saw no other injury that I could see. There was about four feet of water about where the stem was knocked out. I did not feel, to see if there was any other injury. No siding was knocked out that could be seen. I was about the wreck from January until first of July.

I was working at this wreck during all the time that Matthews was working there.

his
(Signed) JAMES + ANGELL.
mark

Sworn to and subscribed before this 11th day of July, A. D. 1854. (Signed) MARCELLUS A. FOUTE,
U. S. Com'r.

U. S. District Court, East. District of Louisiana.

ALEX. NORTON
vs.
Stm'r H. R. W. HILL and Master. } In Admiralty. No. 6853.

Evidence for Respondents.

Deposition of William H. Latham, filed 2d July, 1855, taken at New Orleans, La., 1st day of June, 1856, before and certified by United States Comm'r Marcellus A. Foute, offered and read in evidence for claimant respondent 4th January, 1856. And the said William H. Latham being first duly sworn as aforesaid, did depose and say—

I arrived at the wreck of the World on the 7th of November, 1854, for the purpose of making an examination of her. The wreck was lying on a bar, just at the foot of Island 93, bottom upwards, with her head down stream. I found her partially buried in sand, say four and a half or five feet deep in sand on the starboard side as she lays, larboard side, if she was right side up, and she was seven feet deep in sand on the opposite side.

I caused the sand to be dug away from her bow, and, after digging down about five feet, I came to her deck just forward of her fantail beam. I found her *apron* lying against her beam. His bow laid entirely open from keel to deck. Part of her starboard hood was missing, and had been broken square off, as if it had been struck on forward end, and forced inboard. A blow in any other position could not have had such effect as there shown to have been the case. The larboard side of the boat, five feet and four-twelfths abaft the stem, measures five feet and eight-twelfths deep, all sound and clamps in good order. The hoods from the deck down to the number of five, are there and sound. There is a break or fracture in the side, caused by the planks having been struck endways, from appearance, the hoods being pointed inboard, showing that when the boats came together they must have struck head on. The bows were entirely demolished, in such a way as to lead me to said conclusion.

The break on the starboard side is not more than three feet from the stem, or where the stem ought to have been had it not been knocked out by the collision.

The wreck lays fore and aft the river, head down, and her stern elevated entirely above the sand. This was caused by her wheels dragging on the bottom, during her passage from the point of accident to her present resting-place.

During the low water of 1853 her hull was partially burned down, so that the fore foot, if it had been there, was destroyed, but her hull forward being imbedded in the sand to its present depth, prevented the destruction of her bows as before described. This examination above described, was made on Tuesday, 7th day of November, 1854.

Richard Nixon, John Casey, William Rillfile, John Collins, and Joseph Parr, were present at the time. The last four named were laborers, who dug the wreck out under my orders and instruction.

My occupation has been the diving bell business for the last four years.

The reason why I can speak with such accuracy of measurement, &c. is, that I took down everything on the spot, and placed it in my memorandum book. I have for thirty years kept an account of my daily actions. It is especially necessary to do so in my present business.

There was no break in the boat on either side abaft of five feet four inches. The break is forward of a point five feet and four inches, measuring from her stem.

There are breaks on both sides of the hull, the bands are crushed in on both sides. The breach is longer, or rather further from the stem on the larboard side than on the starboard.

Cross-examined by Mr. Finney.

I went there (to the wreck) with some men; I went there expressly to make an examination of the wreck. My object in making this examination was to satisfy myself and some others concerning the bell boat business, which I pursue, and also by request of a party concerned—Captain Newell; besides, I wanted to see if I could get her machinery out, and make any by that operation. Her machinery was there, but I did not think it would pay to dig it out. Her engine was still there.

I intended to go up to the wreck before Capt. Newell spoke to me.

I reside at present in New Orleans. I have lived here since 1846, and have been a housekeeper here since 1847.

(Signed) W. H. LATHAM.

Sworn to and subscribed before this 1st day of June, A. D. 1853.

(Signed) MARCELLUS A. FOUTE, U. S. Comm'r.

U. S. Dist. Court, Dist. of Louisiana.

ALEXANDER NORTON vs. Stmr. H. R. W. HILL, and THOS. H. NEWELL, Master. } In Admiralty. No. 6853.

Evidence for Claimants.

Deposition of R. L. Robertson, P. A. Shaw, Geo. L. Campbell, Peter Marcey, Amos Applegate, Richard Nixon, Fred. Mitchell, Augustus Whistler, L. A. Drouillard, taken in open court, and offered in evidence with doct. A for claimants, and filed on the 4th January, 1856.

R. L. Robertson sworn for claimants.

Made survey of bow of H. R. W. Hill, don't recollect time; the

doct. before me is the original process verbal of the survey made by me.

(Document referred to.)

Survey of the stem Str. H. R. W. Hill, Newell, master. Board of Marine Surveyors, office 35 Camp St.
State of Louisiana, City of New Orleans.

Richard L. Robertson, Pres't, James W. Biddle, Richard Swain, Josiah Lovett.

The undersigned inspectors for underwriters of New Orleans, and general marine river surveyors, for the inspection of vessels, steamers, and cargoes.

January 3d, 1853. By request of Captain Newell have this day held survey on the stem of the steamer H. R. W. Hill. The damage to the stem of the steamer H. R. W. Hill is said to have been occasioned by coming in contact with the steamer Western World on her last trip upwards to the Cumberland River. And, after careful examination, report as follows:—

Found the main stem split badly from the 10 feet 6 inch mark down as far as could be seen, and the split part showed a little to port, and in the split some pieces of wood or plank were wedged in like the "hood" ends of the boat which struck her, driven in no doubt by the blow and broken off. The stem band, which is of very heavy iron, is also bent to port, and the stem is split entirely through to plank ends on the larboard sides, and probably runs inside as it goes downward, thus indicating that the World must have struck the Hill a little angling from the starboard side; we look upon the stem as being so badly damaged that the boat is not safe with it; and, as the extent of the damage cannot be seen, advise that a small dock be prepared and put under the bows of the Hill, and pumped out as soon as possible, and when ready that a further survey be held, the precise extent of the damage ascertained, and necessary repairs made.

January 4th, 1853. At 5 o'clock again visited the H. R. W. Hill, and found that the dock had been put under, and pumped out so as to have further survey, and report as follows:—

The main stem is split entirely down to the 3 feet mark when it runs outward to nothing, showing the same inclination still to port, but of course in a less degree.

Therefore recommend that the iron stem band be taken off and straightened, and the split and damaged part of the stem be cut off until solid is found, new piece put on, or new stem entirely put in, as may be found necessary, and after the stem is again put in and calked off the hood ends and stem recalked and the iron band put on again.

New Orleans, Jan'y 5th, 1853.

(Signed) RICH'D L. ROBERTSON.
PHILIP A. SHAW.

Duly recorded in the register of the office, this 7th of January, 1853. Attest, (Signed) R. L. ROBERTSON.

This document shows the condition in which I found the boat and my recommendation of the repairs necessary.

Cross-examined.

Knew the steamer Western World as surveyors of the underwriters, I presume that I must have examined the Western World; can ascertain by reference to my records; have no present recollection of the survey made of her.

Attest, (Signed) ROB'T M. LUSHER, D'y Clerk.

P. A. Shaw sworn for claimants.

Made survey report of the Western World in June, 1852, I understood her to be in good seaworthy condition, but suggested that she needed overhauling.

Cross-examined.

Don't know that cargo was not then insured on her; if not, she would not have been crossed on our books; if not crossed, I presume that cargo on her must have been insured.

In 1852 the Western World was about four years old; I think she was worth somewhere between 15 and 18,000 dollars.

She carried somewhere between 7 and 800 tons; always heard that she had good machinery; so thought at the time of survey.

Our examinations are thorough made twice a year; frequently I couldn't get all the damage up; didn't certify until satisfied.

I don't think it at all likely that the timbers about the stem of the Western World were rotten at the time of survey; there might have been some specks or defects about her, but not of sufficient consequence to justify objection to her as unseaworthy.

The H. R. W. Hill was a first class boat among the very largest; "to port" is to the larboard side; "hood ends" are the ends of the plank, where fastened to the stem, fastened in the split of the stem.

Attest: (Signed) ROB'T M. LUSHER, Dp. Clerk.

George G. Campbell, sworn for Claimants.

Deposition of Daniel Bloys read to witness. (Lib'ls except.)

Bloys was boarding at my house after the collision; we talked several times about the collision; I asked him which boat was to blame; he answered that neither was to blame; that it was an unavoidable accident; that it was a dark night; this he repeated to me three or four times, and also five or six months afterwards—it may have been longer; he said at the same time, that Captain Norton was after him for his deposition, and that he didn't see the use of his giving it; that he could be of no service to either party; this was 5 or 6 months after the collision, perhaps more.

Cross-examined.

These conversations occurred at my house, on Laurel street, in this city; the last time on the boat, on which he was at the time—and then it was that he told me they were after his deposition.

Bloys got down here five or six days after the collision; he gave me an account of the way in which the collision occurred, but I cannot remember how he explained it; he said something of the way in which the boats came together, but I don't recollect how. A steamboat man might have understood it, but I did not understood it at the time; I don't remember whether he told me on what side of the river it occurred, or whether in the middle; he may have told me; I don't recollect his having said anything about the signal bells rung by the boats before coming together; he said he had left the wheel three or four miles above, or some short distance above, and that he was sitting down by the stove in the pilot house.

I think Mr. Bloys' wife was present at the conversation; am not sure.

I don't recollect of his mentioning anything of Princeton bar, nor the boat on which he was at the last conversation; if I am not mistaken, it was on the James Robb down in the cabin; I saw Captain Norton on board at the time, and hence the conversation.

I have known Mr. Bloys since 1849; boarded only him and his wife; they were married in the same section as where I was from, Southern Kentucky.

I was acquainted with Captain Newell of the Hill pretty well; we have never been intimately acquainted—merely business relations; shipped goods on his boat.

I was engaged in business with Mr. Soery, under the firm of Soery & Campbell.

I don't think I ever mentioned these conversations to Captain Newell; I did to Mr. Thomas Hamilton casually, soon after Bloys first spoke to me; Mr. Hamilton was agent of the boat.

Didn't mention them to Mr. Soery; took no interest in the matters; had no idea I'd be called up.

Attest: (Signed) ROB'T M. LUSHER,
Dep. Clerk.

Capt. R. L. Robertson, returning, states:—

The Western World was built at Elizabethtown, Pa., in 1848, of $338\frac{2}{95}$ tons; first examined here in 1848—March 12th. She was lengthened 60 feet at Cincinnati in 1850, and had additional clamps and buildings put in. She was at last examined in June 8th, 1852.

Boats frequently carry about double the tonnage measurement (C. H.) The World ranked in the insurance offices as a 2d class boat; cargo was insured, on 2d class boats, at the same rate generally as on 1st class boats.

The insurance offices do not insure to over three-fourths of the

value of boats, ascertained as nearly as possible. Boats five years old begin to wear out.

Cross-examined.

A boat thoroughly repaired may be in good order at the end of 5 years; but they rarely last beyond 5.

Formerly boats were condemned for mere fashion's sake.

I personally inspected the Western World, on the 8th of June, 1852; I did not deem it necessary to have her docked, merely her upper works repaired, hence, I presume she must have been in very good order.

It is customary to overhaul boats for repairs every summer or fall.

Attest, (Signed) ROBT. M. LUSHER,
D'y Clerk.

Peter Marcy sworn for claimants:—

Timber exhibited. The timber shown me is a piece of an apron of a steamboat; the upper end (clear cut) is the top of the apron; at the bottom it is broken off.

If the break was made by a collision, it must have been by a blow near to the stem; a blow 5 feet aft of the stem might have broken it in that way; the break must have been by a boat coming in an angling position or head on, or it may have been by a sideway blow.

Judging from the appearance of the spikes, the blow, I should say, was on the starboard side; if by a side blow, it was rather on the starboard side than the larboard, though it may have been on the latter.

The smaller timber exhibited is a plank or the fore end of a plank which was on the larboard side of the boat; the break in this timber would indicate that the blow was on the larboard side; the apron might have been broken in this way by such a blow; the injury to the striking boat might be considerable or very little.

From the appearance of the timbers I should judge the blow to have been received near the break in the plank; if the break in this plank indicates the place of the blow, it is my opinion that the blow must have been on the larboard side; a boat could not get such an injury on the larboard side without being injured raked on the starboard.

My first opinion as to the blow being on the starboard side was changed on my seeing the break in the plank, exhibited in connection with the apron.*

Attest, (Signed) ROBT. M. LUSHER,
D'y Clerk.

* Add: In the timbers before me I see no defect; they are very sound; there is no decay apparent in them.

Correct, ROBT. M. LUSHER, Dep. Clerk.

Cross-examined.

These conversations occurred at my house, on Laurel street, in this city; the last time on the boat, on which he was at the time—and then it was that he told me they were after his deposition.

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It is customary to overhaul boats for repairs every summer or fall.

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Timber exhibited. The timber shown me is a piece of an apron of a steamboat; the upper end (clear cut) is the top of the apron; at the bottom it is broken off.

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Attest, (Signed) ROBT. M. LUSHER,
D'y Clerk.

* Add: In the timbers before me I see no defect; they are very sound; there is no decay apparent in them.

Correct, ROBT. M. LUSHER, Dep. Clerk.

Amos Applegate sworn for claimants :—

I made repairs to the bow of the H. R. W. Hill, in Jan'y, 1853; I cut out the stem and put in a new one; I had previously gone, at the request of Capt. Newell, with Messrs. Robertson and Shaw, to examine, and they put down the items of repairs, and the way the stem was split, in their survey.

I took off the stem band which was bent from the blow received, and examined where the stem was split; the timber in court is similar in form to the stem; the stem of the Hill was split down on the starboard side from the top, down to the lower part of the forefoot of the boat, which is pretty near down to the bottom of the apron; this split was scarcely visible on the larboard.

The only scratch on the stem of the Hill was on the starboard side of the stem near the band, where it was bent.

The split inclined backwards from the starboard to the larboard.

The small piece of timber in court is a hood-end, and was sticking out in the split on the starboard side of the stem of the Hill; I should judge it to be a hood-end from the larboard side of the other boat, the Western World.

The stem band of the Hill was bent from the starboard over towards the larboard; the bend was about 3 to 3½ feet from the top of the boat.

I am acquainted with the moving of boats, &c.; I don't think it possible that a boat could swing round and injure her stem band in the way this was.

Supposing the World to have been heading directly down stream and the Hill going across quartering up on the larboard side of the World, and the bow of the Hill striking the bow of the World on larboard side, 4 or 5 feet aft of the stem, it would be impossible for the stem band to be bent in the way it was. If knocked that way it would have been bent in the other direction, *i. e.* from larboard to starboard.

The Hill, I judge, must have been near to the shore on her larboard side, or pointing to it, and the World came down quartering and struck her on the starboard. From the appearance of the lick, I judge that both boats must have been pointing to the same shore, and that shore the larboard shore going up, when they came in contact.

If the Hill was ascending the river and the W. World descending quartering across the river, I judge, from the lick, that the World must have struck the Hill on her starboard.

In my opinion, the larboard side of the stem of the World must have come in contact with the starboard side of the stem of the Hill, judging from the hood-end of the World found in the split of the stem of the Hill, and from the bend in the stem band.

To break the apron and the plank in the way they appear to have been broken, the blow must have been a head blow forcing back the apron and breaking off the plank by the pressure.

Cross-examined.

The timber is sound, good, tough timber; it must have been good, sound timber to have broken in the way this is; it is white oak timber.

Attest, (Signed) ROBT. M. LUSHER,
D'y Clerk.

Richard Nixon, for claimants, sworn, deposes:—

I know the timber in court; saw it taken out of what I was told was the wreck of the Western World, on the Island 93, above Lake Providence. I went there with Mr. Lathem. This piece of timber (apron) was found at the bow of the boat, which was lying bottom up. I noticed that both bows of the boat were stove in, as though she had struck something head on. I think the larboard bow was broken in a little further back than the starboard; both seemed knocked in; both broken in about 4 feet back from the bow. I didn't notice, and don't think that she was broken any farther back. (Some one had been there before us, digging into the bow of the boat. The stem was gone.)

My visit to the wreck was on about the 7th Nov., 1854.

The apron now in court, the only piece taken out by me, seems in the same condition as when I took it out. I suppose the World to have struck head on, and her bows to have been crushed in.

Cross-examined.

I'm a steamboat agent. The digging into the boat went on in my presence. The men dug down to the deck. I saw no further damage on the bow than that described. I dug further back of the break. Brought nothing but the apron down.

Attest, (Signed) ROB'T M. LUSHER,
Dp. Clerk.

Fred. Mitchel, sworn for claimants.

I know the timbers in court. They came off the wreck of the W. World at the foot of Island 93. I saw them taken out. They had just been cut off, and had come from the bow; don't know which side. I noticed no break on either side of the boat.

I should judge her bows were knocked right in.

Attest, (Signed) ROB'T M. LUSHER,
Dep. Clerk.

Augustus Whistler sworn for claimants.

The 2 small timbers came from the Western World, Island 93. I didn't go ashore to examine the wreck. Saw the timbers come from it to the boat the H. R. W. Hill. All the plank pieces in court must have belonged to the starboard side.

I observed the injuries to the stem of the H. R. W. Hill. The stem band was bent from the starboard to the larboard side. I

straightened it myself. The little piece in court, I saw in the stem of the Hill. The crack was open an inch and a quarter on the starboard, and very little on the larboard side.

Attest, (Signed) ROB'T M. LUSHER,
Dp. Clerk.

L. A. Drouillard sworn for claimants.

I know the locality about the Princeton and Arkansas bars. From Johnston's to the foot of Princeton bar is about two miles, the course of a boat.

A descending boat would start from Johnston's and fall into the Princeton bar about two-thirds of the way up from the foot of the bar. It is about a mile to a mile and a half from Johnston's to the willow on the bar. From Johnston's to the point Y is about $2\frac{1}{2}$ miles; by the channel between the two bars is about a half mile; the current $3\frac{1}{2}$ to 4 miles.

Johnston's negro cabins are close to his house.

Attest, (Signed) ROB'T M. LUSHER,
Dep. Clerk.

Note as to pieces of Timber.—The pieces of timber referred to in the foregoing testimony are in the keeping of the porter of the U. S. Courts (John Gillen).

Attest, ROB'T M. LUSHER,
Dy. Clerk.

U. S. Dist. Court, Eastern Dist. of Louisiana.

ALEX. NORTON vs. Stm. H. R. W. HILL and THOS. H. NEWELL, Master.	In Admiralty. No. 6853.

Judgment and opinion of court (Theo. H. McCaleb, Judge) rendered Feb'y 21st, 1856:—

About the 14th of December, 1852, at half past four o'clock in the morning, the steamboat Western World, then the property of the libellant, while descending the Mississippi River, opposite Princeton bar, came in collision with the steamboat H. R. W. Hill, then ascending the river, and was so badly injured as to sink almost immediately. Some twenty or thirty persons on board of her were drowned, and the boat herself and almost all her cargo were lost. This suit is brought to recover the amount of damages sustained by the libellant.

On the part of the W. World it is contended, that she was pursuing her proper and regular course in the channel of the river which makes rather across the river towards Princeton bar, when the Hill was discovered coming up the river near that bar, that upon seeing the Hill the pilot of the World tapped his bell once to indicate his determination to take the Arkansas side of the river; that

this signal was answered by the Hill with two taps to indicate her determination also to steer to the Arkansas shore; that thereupon the pilot of the World tapped his bell again once, and that this signal was also answered by two taps; that the pilot of the World then rang his bell to stop his engines, and that they were stopped at the time the collision occurred, and the World had no headway except such as was caused by the force of the current.

On the part of the H. R. W. Hill it is not denied that the signal from the World was crossed; that is to say, that *two taps* were given instead of *one;* but it is contended that the Hill had already crossed to the Arkansas shore, and was too near that shore to leave her position; that the World so far from being in the channel of the river and near to the Princeton bar, had left the channel, and came into collision with the Hill near the bar on the Arkansas shore, striking her on her starboard bow. All the witnesses on the part of the World testify that the Hill, in leaving her proper position near the Princeton bar, came in collision with the World, striking her on the larboard bow near the stem.

It is impossible, of course, that both theories can be founded in fact. To reconcile the evidence is impossible, and I have rarely, even in cases of collision, found the testimony so widely variant, as that of the respective boats is in the present case. It is difficult, indeed, to account for this wide variance in the statements of the witnesses, except upon the supposition, that some of them were utterly deceived by the darkness of the night. I am not satisfied from any evidence adduced tending to affect the character of some of the witnesses for the World, that less credit should be attached to their statements than to those of the Hill. I am not prepared to say that the witnesses of either boat have deliberately perjured themselves. In the absence of proof of a sufficient motive to commit a crime of so serious a nature, I should hesitate long before I would adopt such a conclusion. Satisfied, however, that there was fault somewhere; that there was gross negligence on the part of those who had charge of one of the two boats; that the collision was not the result of unavoidable accident, I have, after an attentive examination of the evidence, formed a conclusion as to the particular boat on which the blame must fall. My opinion is that the H. R. W. Hill was in fault, and, in forming this opinion, I have not been guided by the testimony of the officers of the World, further than it is corroborated by other evidence of higher character, without commenting at length upon all the testimony adduced by the parties. I shall proceed to state very briefly the grounds upon which my judgment must rest.

It was candidly admitted by proctors on both sides, that the case depended upon the single question whether the collision occurred on the Mississippi or Arkansas side of the river. If it occurred near Princeton bar, on the Mississippi side, then it is admitted that the H. R. W. Hill was to blame. If, on the contrary, it occurred near

the Arkansas shore, then it is with the same candor admitted on behalf of the libellant that the W. World was in fault. To determine this question by a resort solely to the testimony of the witnesses who were on the respective boats at the time of the collision, would in my judgment be impossible. The contradiction is so broad and direct that the testimony on one side neutralizes that on the other, and the mind is left in doubt and uncertainty.

Let us then look to evidence of another character, and see if we can derive any aid in solving the main question at issue. If the World was running in the channel, and the collision occurred in consequence of the Hill leaving the Mississippi shore with the intention of crossing over to the Arkansas shore, the former would receive her injury on her larboard side. I have come to the conclusion that the Hill struck the World on the larboard side very near to the stem. The stems of the two boats came almost directly in contact. The witness Matthis, who went up to the place of collision at the request of the insurance company for the purpose of examining the wreck of the World, and saving as much as possible of the cargo, states, that from his observation of the hull of the World, he would say that she was struck on the larboard side of her bow. She was broken in on the larboard side of the bow about fifteen or seventeen feet as near as he could judge, *from the stem.*

That was when the blow was received which did the damage. He would judge that the blow was a severe one, for the hull was cut down to within three streaks of the keel. The examination was made by this witness in the month of December, 1852, very shortly after the collision occurred. The witnesses, Angell and Latham, who also went to the wreck, while they do not in all respects concur with this witness in his statement, do not, I think, contradict him. They show that the injury was sustained by a blow more immediately "head on" by the stems of the two boats coming in contact. This blow caused injury also to the starboard, but the witnesses, Latham, states that the break on the starboard side is not more than three feet from the stem, or where the stem ought to have been had it not been knocked out by the collision. Capt. Fulton, of the World, states that the boat was wounded in her larboard side near the stem, a hole was broken in her. The witnesses, Fletcher and Bloys, who were pilots on board the World, and were up and on deck at the time of the collision (the former being at the wheel), both concur in stating that the Hill struck the World on the larboard side, as the former came up quartering and steering for the Arkansas shore. I allude to their testimony, not because they are entitled to more credit than the pilot who was in charge of the Hill, but because their statements are corroborated by that of Matthis, who examined the wreck. That they were mistaken in regard to the precise spot where the boat was struck is made clear by the examination to which I have referred. This mistake, however, is not material, and, amid the excitement of the moment, it may easily have been committed.

The mate of the World says that the Hill struck her on the larboard side forward of the bitts, and the bitts are 5 feet aft of the jackstaff.

But the witness in whose testimony I think the greatest confidence may be placed, is Henry Evans, who was descending the river in charge of a flat-boat a short distance from the two boats when they came together. There is nothing to show that his statement should not be received as true. His opportunities for witnessing the movement of the boats, and the manner of their coming together, were certainly better, far, than those possessed by persons on board the boats themselves. He was on the deck of a flat-boat without anything to obstruct his view except the darkness of the night, and states that the lights of the steamers were visible; and although the night was dark the two shores of the river were distinctly seen by him. He was about one hundred yards above the two boats when the collision took place. He states that the collision occurred opposite Princeton bar, and at the time of the collision the two boats were about 250 yards from the bar, and just below the willows on the bar, and near about half way down the bar. When he first saw the Hill she was running up the Mississippi shore about a mile below the foot of Princeton bar. She proceeded up the Mississippi shore until she got to the foot of Princeton bar or a little above, and then turning out she ran in a quartering direction for the Arkansas shore until she came in collision with the World. After the collision the two boats floated down some half a mile to where they and the flat-boats in charge of the witness passed each other. This witness distinctly heard the signal bells of the boats, and concurs fully in the statement of the witnesses on the part of the World in reference to the crossing of the signal of the latter by the Hill. I consider the statement of this witness as inclusive in fixing the true position of the boats and how they came together.

He may be mistaken in some immaterial points, but in reference to the main question at issue it is difficult to believe that he has testified to any circumstances that is not substantially true. Such at least is my own conviction produced by a consideration of the superior advantages he possessed in observing the motions of the two boats. Being satisfied, then, that the World was in her proper place, and that the Hill was not close into the Arkansas shore at the time of the collision, I have no hesitation in saying that a serious fault was committed by the latter in giving a wrong response to the signal of the former, and in continuing to steer for the Arkansas shore across the bows of the World. I am further satisfied that the position of the boat was where it is placed by the flat-boatman, from the fact that the boats themselves floated down after the collision near the Mississippi shore, and that portion of the cargo and some of the cattle, which were thrown from the World when she turned bottom upwards, were found near the Carolina Landing on the Mississippi shore. The testimony of the witness Matthews, in reference to the course of the current, leads strongly to this conclusion. I have

attached but little importance to the testimony *to the testimony* of passengers who were asleep just before the collision; and so far as the statements of those who were on board the Hill affect the character of the pilot Fletcher, it is only necessary to say that they have been met by counter evidence equally strong.

I therefore pronounce for the damage in this case to be ascertained by a reference to the Comm'r in Ad'y, R. M. Lusher, Esq., upon the coming in of whose report a final decree in favor of the libellant will be rendered.

U. S. District Court, Eastern District of Louisiana.

Thursday, February 21st, 1856.

Court met at A. M., Pres't, Hon. Theo. H. McCaleb.

ALEX. NORTON, owner Stm. W. World,
vs.
Stm'r H. R. W. HILL and Master. } No. 6853. In Admiralty.

Opinion and Reference.

The court having taken under advisement, and carefully considered this cause, rendered its judgment on the merits of the cause in writing, concluding that at the time of the collision in question the steamer Western World was in her proper place, and the steamer H. R. W. Hill in fault. Wherefore it is now ordered that the Commissioner in Ad'y, R. M. Lusher, Esq., proceed to ascertain and assess the damages sustained by the libellants, and report the same to the court for a final decree in favor of the libellants.

U. S. District Court, Eastern District of Louisiana.

ALEX. NORTON, owner of Stm'r Western World, and Transferee of claim for cargo,
vs.
Steamer H. R. W. HILL and THOS. H. NEWELL, Master. } No. 6853. In Admiralty.

Admiralty Commissioner's Report and Schedule of Damages.

Filed August 13th, 1856. Confirmed Dec'r 9th, 1856.

To the Hon. Theo. H. McCaleb, Judge of said Court:

The undersigned Commissioner in Admiralty, to whom your Honor has referred the ascertainment of the damages sustained by the libellant in the above entitled cause, respectfully submits the following report:—

1. The libellant claims, in his own right, as sole owner of the Western World and appurtenances, the total value of said boat at the time of the collision (Dec'r 14th, 1852), estimated at	$25,000 00
Money on board, " "	2,100 00
Store, passage money, and freight due, estimated at	4,900 00
Making in all (9th and 10th articles of libel),	$32,000 00

2. He also claims, as transferee of the insurances (at St. Louis), of the cargo on board and boat (see eighth article of libel), the further sum of	$25,000 00
Making in all (10th article) the full sum of	$57,00 00

1st. The evidence submitted in support of his allegations on the value of the boat at the time of the collision (see testimony of W. H. Fulton, Capt. J. E. Montgomery, W. H. Withenbury, John E. Hyde, J. H. Oglesby, A. D. Macaulay, and John L. Macaulay; also, on condition of boat, that of Geo. W. Sparhawk, of St. Louis), sustains the valuation of $25,000; while that offered by the claimants makes the valuation vary from $12,500 to $16,500. (See testimony of R. L. Robertson, P. A. Shaw, Thos. B. Smith, and Silas F. Miller.) Considering the relative bases of valuation assumed by the respective witnesses, the commissioner is satisfied that the libellant's witnesses reason on the presumption that the ordinary depreciation of steamboats by age, is modified very materially by the care which may, or may not, have been taken of them, and that the cash value of such boats is affected considerably by their availability or business capacity and patronage at certain seasons of the year; and that the claimants' witnesses, on the other hand, regard the depreciation as inevitable, and any change in the construction of a boat (such as lengthening, &c.), necessarily prejudicial to her strength and intrinsic value. While the first presumption doubtless leads to an exaggerated idea of the true value, it is manifest that the latter establishes an uncertain and unsafe rule for the assessment of damages, according to the principle laid down in the case of Williamson et als. *vs.* Barrett et al. (13th Howard 110, see also 113), namely, that the *injured party is to be allowed an indemnity to the extent of the loss sustained.* Comparing the sources of information, most of the libellant's witnesses speak from actual inspection of the boat, while the most reliable of the claimants' judge only from descriptions given them and their knowledge of boats in general. The highly intelligent reasoning of Capt. S. F. Miller, is neutralized by the confident experience of Captain J. E. Montgomery, and the general idea of the witness T. B. Smith, is evidently founded on an erroneous supposition as the original *cost* of the boat. Comparing the testimony of W. W. Withenbury, for lib't, in assuming, with the former, that the boat when lengthened (1850), was worth her original cost and equivalent to a new boat, and with the latter, that during the two years after this date, she depreciated about 20 per cent. per annum, and basing the general estimate of the witness, T. B. Smith, on a correct idea of the original cost (say 33,000), the conclusion seems legitimate, that in Dec'r, 1852 (the date of the collision), the intrinsic value of the Western World was about $19,800 00, which, enhanced by the business season, would make her cash value at the

time of her loss about $22,000 00. The general weight of the testimony is, however, in favor of a valuation of $25,000, which is accordingly reported in the schedule submitted to the judgment of the court.

The amount of freight and passage money realizable by the trip of the Western World, and the sum of money on board, and lost, at the time of the collision, are proven, satisfactorily, by the witness W. H. Fulton (acting master of the boat, and clerk), to have been about $5,300 00, which is accordingly embraced in the schedule. No proof whatever is afforded of the value of the stores or other articles alleged to have been lost.

2d. In support of his allegations as to the cargo of the boat, the libellant has exhibited transfers, or assignments, by several insurance co's of St. Louis, namely :—

1. Feb'y 7th, 1853, by Merchants' Mutual Ins. Co., on cargo,		$14,693 77
2. Jan'y 22d, "	Marine Ins'ce Co., on do.,	6,210 00
3. Feb'y 7th, "	Millers' Manufacturers' do.,	6,715 00
" Jan'y 22d, "	St. L. Floating Dock Co., on cargo,	1,567 00
5. " " "	Phœnix Ins'ce Co., " "	1,511 75
Total assignments on cargo,		$30,697 52

Together with the depositions of the original shippers, or other employees, taken de bene esse, at St. Louis, in April last.

1st. Of the first, the full amount, viz., is proven by R. M. V. Flercheral, Wm. C. Hennett, John C. Powell, Novée Vallé and Sam'l Stillwell.	$14,693 77
2d. Of the second, the full amount also, viz., is proven by Sam'l Engles.	6,210 00
3d. Of the third, there is proven but by Denis Marks and R. Ulrici, of St. L., and John L. Macaulay, N. Orl's.	4,615 00
4th. Of the fourth the full amount, viz., is proven by R. M. Herring, Jno. C. Bull, Edgar Ames.	1,567 00
5th. And of the fifth, there is proven but by A. W. Fagan.	1,324 00
Making the total insured value of cargo lost, from, which is also embraced in the schedule.	$28,409 77

It thus appears that the libellant's claim in his own right, as owner of the boat and appurtenances, $32,000 00
is proven to the extent of $30,350 00
And that, as transferee, 25,000 00
to the amount of 28,409 77

Claim, $57,000 00 Proof, $58,759 77

Observing the established rule restricting the amount recoverable to the amount claimed in the pleadings, the commissioner reports the allegations of the libel, as to the extent of the loss, as substantially sustained.

Respectfully submitted.

(Signed) ROBT. M. LUSHER,
N. O., Aug. 13th, 1856. Adm'y Comm'r.

See Schedule of Damages.

Note.—All the evidence on file has been examined by the commissioner, the following depositions, &c., are referred to, as pertinent to the question of damages.

For Libellant.

Depositions of W. H. Fulton, J. E. Montgomery, W. W. Withenbury, John E. Hyde, J. H. Oglesby, A. D. Macaulay, John L. Macaulay, G. W. Sparhawk, W. J. Eaton (St. L's), M. A. Mathis, Sam'l Mackall, and those Sam'l Stillwell et al., and of Jno. C. Powell et al (St. Le's), Ap'l, 1856, also the transfers referred to by said witnesses.

For Claimants.

Depositions of R. L. Robertson, P. A. Shaw, T. B. Smith, and S. F. Miller. (Signed) R. M. L., Commissioner.

U. S. Dist. Court, Eastern Dist. of Louisiana.

ALEX. NORTON, owner of St'm'r Western World, assignee of insurers of cargo thereof, vs. St'm'r H. R. W. HILL, and T. H. Newell, Master. } 6853. In Admiralty.

Schedule of Damages.

Stmr. Western World, tackle, apparel, machinery, furniture, &c., total loss,		$25,000 00
Freight list (actual loss realizable on earnings of trip),		2,600 00
Passage money " " " "		650 00
Cash in safe of boat, lost,		2,100 00
		$30,350 00
Cargo Insured at St. Louis.		
Assign't by Merchants' Ins'ce Co.,	$14,693 77	
Do. " Marine Ins'ce Co.,	6,210 00	
Do. " Millers & Manufacturers' Ins. Co. ($6,715 00) proven,	4,615 00	
Do. " Floating Dock Co.,	1,567 00	
Do. " Phœnix Ins'ce of St. Lo's ($1,511 75) proven,	1,324 00	$28,409 77
Total damages,		$58,759 77
Allowable " claim, with interest, &c. from judicial demand.		$57,000 00

Note.—The W. W. is shown by W. H. Fulton to have been insured in St. Louis for about $16,000. No other evidence has been offered on or in relation to this point.

August 13th, 1836.

(Signed) ROBT. M. LUSHER, Ad'y Comm'r.

U. S. District Court, East. Dist. of Louisiana:

ALEX. NORTON, owner of St'r Western World, vs. Steamer H. R. W. HILL et al. } No. 6853. In Admiralty.

By consent. Wednesday, 25th June, 1856. Present, P. E. Bonford, Esq., for lib't, R. H. Marr, Esq., for claim't.

Testimony accompanying Admiralty Commissioner's Report.

P. E. Bonford, Esq., examining and writing testimony.

J. E. Montgomery, being duly sworn, deposes and says. I am captain of a steamboat; I have been engaged in the business of steamboating for about twenty-three years. I have had several steamboats built, and have superintended their construction. I am well acquainted with everything appertaining to steamboats, and consider myself competent to form an opinion of their value. I knew the steamboat Western World; have frequently been on board of her; have had opportunity of examining her as to her capacity for carrying, the character of her machinery and engines, and the style of her finish. I saw the World immediately after she was lengthened in November (1850). The Oregon, of which I was then captain, had got aground at that time on the Ohio River, and the World was employed by me to pull the Oregon off. I then went on board of her, and examined the improvements which had been made on her. There was then some discussion between Captain Norton and myself as to the relative superiority of his boat and mine, and we went on the World together to examine her. The World had been greatly improved by being lengthened; her length was increased sixty-feet, and her carrying capacity greatly enlarged. A boat is not injured by being lengthened when the work is properly done. I have had boats lengthened, and consider that they were rendered as good as if the work had been done when the boat was originally built. The Western World was lengthened on the marine railway at Cincinnati, by Johnson & Martin, builders of the first reputation, who never turn out bad work; they built such first class boats as the Princess and Natchez. I consider that when I saw the Western World in November, she was more valuable than the day she first came out. I think that in December, 1852, the World was worth twenty-five thousand dollars. I think the World would readily have brought that sum. It was the commencement of a business season, and she would have sold for more then, than five or six months after-

wards. That season was the best season for steamboats for the last ten years. Her engines were of ample power for her increased capacity. I know boats with less cylinder who carry more.

Cross-examined.

(R. M. Marr, Esq., examining and writing down testimony.)

Think the World was built in 1848; I saw her first in the winter of 1848, when she landed at Cincinnati; she was built somewhere above Cincinnati; in 1848 I was aboard of her at Cincinnati, but did not examine her; I never did examine her before she was lengthened further than being aboard of her.

I never measured her cylinders, I was merely told that they were of a certain size, because I contemplated buying a boat of the same size, the Pike No. 9—that is, of the same sized machinery; I bought the boat.

(I put down at request of Mr. Bonford that witness further says—"I was at that time told that the machinery of the two boats was of the same size.")

The costs of the machinery of a boat is estimated at one-third the cost of the entire boat; that is the general calculation; that rule holds good with any boat not exceeding fifty thousand dollars.

The size of the timbers in building a boat is regulated by the tonnage: it is regulated also by the style of the boat.

There are some boats of 400 tons that have heavier timbers than others of 800 tons; if I go to a ship-carpenter and say, I want you to build me a boat, he asks what size timbers, width of beam, depth of hold and length; he puts in the timbers of each size as I specify; he makes them according to his discretion, if I contract for the building of a certain specified character of a boat without designating the size.

I cannot say how the boats built above Cincinnati compare with those built at Cincinnati, at Albany, or at Louisville, for I never built above Cincinnati; the St. Louis people prefer to go to Pittsburg to build their heavy boats because they think they can do better there.

I did not see the Western World while she was on the ways when she was lengthened. (I put down at the request of Mr. Bonford that witness also says: "I was intimate with Johnson and Martin, who told me at the time that the boat was on the ways, and that she was lengthened sixty feet.") I saw her in November, 1850, about the first of the month, just at the foot of the falls at Louisville; she had on board about 150 tons of freight.

Did you examine her hull at that time?

I did not go into her hull; I could see from the outside that it was a very smooth looking job; I went through the deck-room and up stairs into the cabin. (Mr. Bonford insists on having the additional answer of witness put down, as follows: "I made the exami-

nation of this boat at that time for the purpose of testing accuracy of Capt. Norton's declaration then made to me that now he had as good a boat as the Oregon."

I did not make such an examination as enabled me to say what work had been done, or how it had been done; I saw that she had been lengthened, her guards widened, and the boat greatly improved; I made no other examination than I have just stated; I was on board about half an hour, long enough to take a drink or two and look around the boat, and see that she was a pretty good steamboat.

I brought the Roff out in February, 1853, and had a good season with her, better prices than we have had since; I think the fire at St. Louis in which so many boats were destroyed was before that.

Has not the style of building boats changed very much since 1847, 1848?

I think not, except with the same power they build longer boats.

A boiler at 5 years old, if it has been properly taken care of, would be a safe boiler; the hulls of steamboats depreciate annually, some faster than others, owing to the care that is taken of them.

Would you have given $25,000 for the Western World on the 14th Dec., 1852, if you had wanted a boat?

I would; the America and the Alex. Scott, boats built about at the time with the Western World, of about the same capacity, same style of boats, have been sold within the last six months, both being in their seventh year, for $20,000 00 each; the America was sold within the last 3 months; I have merely been told the prices for which these boats sold.

The America is a boat of between 1,000 and 1,100 tons carrying capacity; her measurement is in the neighborhood of 700; the Scott is about the same; she measures about the same as the America, not quite as much.

The carrying capacity of the World was increased about 300 tons by being lengthened.

I did not see the World at any time during the year 1852; I was on board of her several times in 1851; I made no special examination of her at that time.

Being asked what would have been the value of the Western World on the 14th Dec., 1852, independently of the prospects of a good business season, witness says:—

I think a boat at the beginning of the business season is worth $10,000 more than at the end of the season. If the Western World had been running all the summer and fall of 1852, that would not deteriorate her value in my estimation.

Re-examined.

Underwriters on steamboats are in the habit of putting low rather than high valuations in their policies.

(Signed) J. E. MONTGOMERY.

Sworn to and subscribed at New Orleans, this 25th June, 1856, before (Signed) ROBERT M. LUSHER, U. S. Comm'r.

U. S. Dist. Court, Eastern District of Louisiana.

ALEX. NORTON, Owner of St'm'r Western World, vs. St'm'r H. R. W. HILL and Master. } In Admiralty. No. 6853.

Friday, 27th June, 1856. Present: P. E. Bonford, for lib'ts, R. H. Marr, for comp'ts.

Testimony accompanying Admiralty Commissioner's Report.

Wellington W. Withenbury, a witness for libellant, sworn, deposes—

I am a steamboatman, and have been so engaged for sixteen years; have commanded boats fourteen years; have owned interests in boats, and have built several boats, bought and sold them, and, I may say, have sunk several.

I think I am a good judge of the value of steamboats. I worked practically at the building of such boats some years, and I think I am a pretty good judge when I examine.

I knew the Western World, was frequently on board of her. I recollect that she was lengthened in some summer, probably of 1850. I know where and by whom she was lengthened. She was lengthened at Cincinnati, on the marine railway owned by Johnson, Morton & Co., hauled upon the way. I saw her on the ways there. I was on board of her very often during the work of lengthening of her, having business about there (Ci. my home), and being attracted by curiosity to see how the work was done. I understood that she was lengthened sixty feet. The work was done by the very best workmen, those who built the Natchez and such boats, and I never knew them to do any poor work. The work on the Western World was of the very best quality; the breaking of butts, that is, the splicing of the timbers in lengthening her was done with extra care, so that she was as perfect as though she had been originally built that way. Everything that was objectionable in the part of the boat not lengthened was removed from her; and it is my opinion that when the lengthening was over she was just as good as a new boat. She had extra clamps and fastenings in her which boats of her size (when lengthened) do not usually have, and this made her the stronger. Another reason for my considering her as valuable as she was when new, was the increase of her capacity (fully 300 tons) which made up for the depreciation caused in her by her running a year or two. (I don't know how long she had been running.)

I had noticed the World when new. She was finely finished, and her machinery was very large. Her cylinders, I believe, were from 24 to 36 inches in diameter, and had a stroke of 8 feet, I should say. There were no larger engines on boats in that day, that came out of

the canal, and the World was reckoned a first class boat for the canal. Her timbers were quite heavy enough to justify her being lengthened without injury to her strength.

I saw the World occasionally after she was lengthened, but not as often as previously, as she was in a different trade; I noticed particularly to see whether she "hogged," as it was expected she would from being lengthened, and I was satisfied that the work was well done, and that she kept as straight as if she had originally been built of that length.

Her value in Dec. 1852, depends on the care that had been taken of her; she could not have been built for less than $30,000 00 originally, and she still had this value when she was lengthened, as I have already stated; she probably cost more than $30,000 00; there was an increase of from 15 to 20 per cent. in the cost of building boats from 1847 or 8 to 1852; considering all these circumstances, and supposing that ordinary care was taken of the World, and that she had met with no serious accident, she could not have depreciated more than 10 per cent. per annum after she was lengthened.

Cross-examined.

From 48 to 50 I know that the cost of building rose from $13 to $17 per ton; the two boats, in my mind, were of about the same size of timbers, and were built for the same trade (Red River).

I cannot recollect now whether my last boat, the Echo, was built the same year the World was lengthened, but I think it was in 1850.

I never made any special examination of the hull or the machinery of the Western World after she was lengthened and began to run; the condition of these parts of the boat and of the boilers affects very materially the value of a boat and an estimate of it.

The timber of boats built up at Elizabethtown and New Albany, and in the upper regions, is generally said to be better than that used in boats built in Cincinnati; the latter place excels in style of finish, and in taste generally; the reason for preferring the timber at the upper place, is because it is not rafted, but taken directly from the hills.

It is impossible to state, in general terms, the depreciation of a boat in value in five years; the Alex. Scott was not considered by underwriters as having depreciated at all.

There has been among steamboat men a prejudice against boats that have been lengthened, principally on the ground that lengthening renders boats liable to hogging; the lengthening of the World removed this prejudice from my mind; the new position of the boilers aided in protecting her from hogging.

I think I was on board the World at Cairo, in 1852, once. With a view to purchasing, I would examine a boat all over her hull, cabins, machinery, boilers, and all else, and I would also examine the books of the inspectors for the underwriters, to ascertain their

opinion of her, as they are in the habit of examining a boat critically; without such an examination I dont't know that a man could arrive exactly at the intrinsic value of a boat.

Re-examined.

I could form an appreciative value of a boat without such an examination from her general reputation; in forming such an estimate, I may fall below the real value of a boat as readily as to go beyond it.

(Signed) W. W. WITHENBURY.
" ROBT. M. LUSHER,
U. S. Comm'r.

Friday 27th June, 1856. Present: P. C. Bonford, for lib'ts, R. H. Marr, for comp'ts.

John E. Hyde, also a witness for the libellant, having been duly sworn, deposes—

I am an agent of steamboats; I have also been master of boats, and owned interests in them; I have been for the last 25 years connected with steamboats in one way or another, and feel qualified to express an opinion on their value.

I knew the World very well; I had been engaged in business relations with Captain Norton before she was built, and after she came down, I acted as her agent; she was built in 1848; I was frequently on board of her, and had occasion to examine her very particularly; she was lengthened, after she came out, sixty feet; in my opinion this increased her value very largely; she became a very large freight boat, and had also, at the same time, a very good passenger cabin; her capacity was from 1000 to 1100 tons; the work on the World in lengthening her, was the only job of the kind that I ever saw properly done, it was done in a very superior manner; I saw her just after she was lengthened, and I had occasion to notice her particularly, the trip before her last; on this occasion she was in good order indeed.

There was an increase of 15 to 20 per cent. in the cost of building boats from 1848 to 1852. There was of course a corresponding increase of value in boats already built.

When I last saw her, the World was perfectly straight, as straight as the day she came off the ways.

With the underwriters at this time, she stood as a first class No. 1 boat.

In December, 1852, considering all the circumstances, I think the World was fairly worth $25,000; Captain Norton was the owner; I considered him very careful in his control and disposition of the boat; he seemed to me to be very careful.

Cross-examined.

The World was built in the fall of 1848; she came out in the fall

and winter of '48 '49; when first built, she was a boat of 750 to 800 tons capacity.

Her custom-house measurement was about 350 tons; she was built at Elizabethtown, Pa., her hull, and finished off at Pittsburg; she was 26 inch cylinder and 8 ft. stroke (engines).

I never was in the hull of the World, in 1852, or at any time after she was lengthened, that I recollect; I was just after she first came out; in 1852, I examined particularly the machinery, engines and boilers of the boat.

I have no business connection with Capt. Norton now; the depreciation of a boat in her 4th year, in general, is very considerable, about 50 per cent.; the depreciation after the 3d year is very slight; if she gets through the 3d year without the dry-rot, she does not depreciate so fast; she may last 7 or 8 years.

The depreciation by wear and tear after a 3d year free of dry-rot, can be replaced by repairs.

The style of finish of boats since 1852, and, as compared with previous years, has not, in my opinion, and according to my taste, greatly improved.

As compared with Louisville pass'r boats and St. Louis pass'r boats, boats built for the trade from Cincinnati to N. O. (through the canal), were smaller, and their cabins cramped relatively.

Continued till Tuesday the 1st July, 1856, 5 P. M.

(Signed) JNO. E. HYDE,
(Signed) ROB'T. M. LUSHER.
U. S. Commissioner.

Thursday, July 1st, 1856. Before Ad'y Comm'r. Present: P. E. Bonford, for lib't; R. H. Marr, for claim't.

John E. Hyde, recalled for lib't, under oath, says:—

Since testimony the other day, June 27th, '56, I have found, on examination of my memoranda, that the World came out in the spring of 1848.

Being asked as to dry rot, witness says, when the World was lengthened I considered his a new boat, and therefore, in my opinion, she was but two years old when she was sunk. The very trip before she was sunk I examined her particularly (as before stated), and then there was no indication of dry rot about her in the place where the dry rot usually shows itself, on boats, in the water-wheel beams.

I should think that in December, 1832, the World (considering the season) would have brought 2 or $3000 more than in July preceding.

Cross-examined.

I never was in the hold of the World after she was lengthened; I had been before she was lengthened; I made a particular examination of her timbers on dock, after she was lengthened, and at the time already referred to, at Captain Fulton's request; I did not use

any trier, or other special test, in doing so, for the purpose of ascertaining the soundness of the timbers.

I can't say whether new water-wheel beams were put in her when she was lengthened or not.

I don't know how many old timbers were taken out when she was lengthened; the new portion added to her was one-fourth of her length.

Three months' increase in the age of a boat does not add to her value as a general rule; circumstances may advance her value materially, however, in that time. The lapse of three months may bring her to a season when she would sell better.

I did not contract for the building of any boat, or have any built in the year 1852; nor did I sell any boat in 1852.

I bought a boat for other parties in 1852, the Jamestown in February or March; she was an old boat; I bought her for about one-tenth of her original cost; she ran two years afterward, and sold for $1000 more than I paid for her.

Re-examined.

I re-examined the World at Captain Fulton's request, on his intimation that he wanted to buy an interest in her; I then formed an opinion of her value. Fulton told me the price that he would pay, for one-fourth interest in her—$6000 00; and I was of the opinion and told him, that she was worth it, considering her condition and the circumstances she was in. The Jamestown I bought at private sale; she was about 7 years old, and the underwriters wouldn't insure on her at all; the next year, however, they did insure on her.

(Signed) J. E. HYDE.

United States District Court, Eastern District of Louisiana.

ALEX. NORTON, owner of Str. Western World, vs. Stmr. H. R. W. HILL. } In Admiralty. No. 6853.

Thursday, 26th June, 1856. Before Ad'y Comm'r. Present: P. E. Bonford, for libellant; R. H. Marr, for claimants.

Testimony accompanying Admiralty Commissioner's Report.

J. H. Oglesby, a witness for the libellant, having been duly sworn, deposes:—

I am now in the commission business, and had been, prior to the last two years, acting as agent for steamboats for ten years. I have also been a steamboat captain during three years. In these capacities I have become acquainted with the value of steamboats; and I have also been interestsd in the ownership of such boats.

I was acquainted with the Western World. Our house were agents for this boat before and at the time of her loss; and I was

on board of her almost every trip. I think she was lost in the fall or winter of 1852.

She was a very good business boat and of good capacity at that time; stood very well with shippers and the underwriters, I believe; she had been lengthened after running some time; this lengthening increased her business capacity very greatly. Boats generally, when lengthened, bend or break at the point of increase, that is, "hog" or "sag" according to the river expression, that is, get out of line; but in the case of the World it was a frequent subject of remark that she kept her shape peculiarly well; and the last time I was on her, she was perfectly straight. It was the opinon among steamboat men that the lengthening of the World was a good job, and that she had been improved by the change.

(Objected to.)

It was either here or at St. Louis that I was last on the World; I do not recollect whether it was immediately before her last trip or not; but it was some time in that fall. Her cabin was well finished and neat, and she was a very comfortable boat; her accommodations were very good.

In Nov. or Dec., the commencement of a business season, a boat is most valuable; I should say that in December, 1852, the World was worth from $23,000 to $28,000; I know that just before that time, a gentleman was willing to purchase one-fourth of her at a valuation of $24,000; I have known a boat valued by her owners at only $14,000 in August, to command an offer of $18,000 in November, which was refused by her owners.

Cross-examined.

I think the W. World was built in the spring of 1848—I believe it was; about 800 tons burthen was claimed for her when she first came out, and she carried about that; she was built at Pittsburg or in that neighborhood; some of the finest boats we have are built at Pittsburg.

I never examined the machinery of the World, particularly, nor her boilers nor engines, but she made her usual trip regularly the usual test of the condition of her engines; never examined her hull; never was inside of it, only noticed the shape.

If I was going to buy a steamboat, I would first get an inspector to go with me into the hull to examine it; I should then require a certificate of the soundness of the boilers; a man that has not had this done can judge only relatively of the value of a boat from her general outside appearance; a boat that is not well built cannot keep her shape.

If a boat is not overhauled, put on dock or the ways, and is merely patched up from season to season, her annual deterioration is about 15 per cent. per annum, lessened however, by the character of the repairs put on her; some few boats, the best built, even 8 years old,

still retain their position on the underwriters' list; the average lifetime of western boats is about six years.

The World, when four years old, after her improvements in dock, I would rather have had than when she was first built when she was short; she would have made more money, I mean, and her value have been greater to me in this respect; when she was five years old her value must have been lessened; the first year and a half after dockage the depreciation of a boat is about 15 per cent. and after that, the increase of depreciation is greater; the general depreciation of a boat that runs five years without dockage is 75 per cent., but this can be decreased materially by dockage, and her being perfectly overhauled.

The World was a better business boat than the America ever was, not so fast a boat, but her cabin better and the boat less expensive in every way; she was not so good a boat as the Alex. Scott; the Scott had one foot more stroke than the World; their cylinders were of the same diameter; this is my impression.

The value of an old boat is affected materially by the size of her machinery; the cylinders now used are larger than those formerly in use.

The World was always in the St. Louis trade after she was lengthened; I do not know when she was lengthened; I think she was running through all the summer and fall of 1852; she lost but little time; I am not certain of this.

A boat lengthened at 2 years old is much better than one lengthened at three years old; at one year better still.

This answer is in reply to the question whether witness's estimate of the value of the World was affected by a consideration of the time at which she was lengthened.

A man who has not thoroughly examined a boat cannot accurately state her value, but, as I said before the value of a boat is relative, depending on the business season and other circumstances, and an approximative value may be arrived at.

In the case of two boats of the same capacity and draught, the same finish, and the same size of machinery, one of which has been lengthened since her original building, and the other not (but of the same length), I should certainly prefer to purchase that one which has not been lengthened; there is a prejudice against boats that have been lengthened, but I see no good reason for this prejudice, as I believe it possible to make a boat thus lengthened just as valuable intrinsically as one that is not; the World is the only boat that I know of that was not weakened by lengthening; she kept her shape.

Re-examined.

Capt. Alex. Norton is the only owner of the Western World that I know of; I believe that he knew how to take care of his boat; I have no reason to suppose that the World would not have been able to run for eight years in all or more; I don't see why she shouldn't

have lasted as long as any of the 8 year boats; she was well taken care of.

One of the purchasers of the America, at her sale about two months ago, told me that $20,000 was paid for her; she was 6 or 7 years old at the time of sale, at least that old. (Objected to.)

(Signed) J. H. OGLESBY.

Sworn to and subscribed at New Orleans, this 26th June, 1856, before (Signed) ROBT. M. LUSHER, U. S. Comm'r.

U. S. Dist. Court, Eastern Dist. of Louisiana.

ALEX. NORTON, owner of Stmr. Western World, vs. Stmr. H. R. W. HILL. } In Admiralty. No. 6853.

Tuesday July 1st, 1856. Before Ad'y Comm'r. Present: P. E. Bonford, for libellant; R. H. Marr, for claimants.

Testimony accompanying Admiralty Commissioner's Report.

Alex. D. Macaulay, for libellant, having been duly sworn, deposes:—

I have seen the world here in New Orleans, when she first came here and afterwards in Cincinnati; and I went on board of her every trip she made to this place. I was agent for the boat after she was lengthened—that is, the firm to which I belonged—Oglesby and Macaulay. I was in Cincinnati when she was lengthened, and saw her on the ways there, from the latter part of June up to the 7 and 8th July, 1850—during some eighteen or twenty days that I was in Cincinnati.

Johnson, Martin & Co., of the Marine Railway, were doing the work on the boat—I saw them about there.

After she was lengthened, she was a very good boat—one of the best finished boats in the St. Louis trade at the time. Her cabin was well finished, the most modern finish then in vogue in that trade, her rooms large, and the cabin outfit the best of any St. Louis boat at that time. In each room I noticed particularly a washstand and all the other conveniences now found on the finest class boats.

She had a very fine piano in the cabin. Our house was the agent of a large number of boats at that time. We were doing more business for St. Louis boats than any other house.

Our business required me to go on such boats every day frequently. Just before the collision, when she was at New Orleans, I was on board; she was in as good a condition as any other boat. She was perfectly straight (not hogged) as far as I could see.

I have been connected directly with steamboats since I was quite young; have been cognizant of the sales of such boats, and confirm an opinion of their value in a business point of view, as to their busi-

ness capacity. I should say that in Dec'r, 1852, the World was worth from 26 to $28,000.

Cross-examined.

I never built nor contracted for the building of a steamboat.

In June or July, 1850, when I was in Cincinnati, I was 23 years old. I can't say what time the repairs were begun on the W. World in that year; when I was there they were putting up the timbers, and they had commenced planking the bottom before I left.

No change was made in the cabin of the World when she was lengthened, nor in her furniture or outfit as far as I know, except that on her arrival down here I discovered that she had new carpets down.

I was frequently in the hull of the World while she was on the ways. I was once in it after she was lengthened, the second season after she came out. Some time in 1851, I think, I presume it was currently reported that the World cost $35,000 when she first came out from Pittsburg.

I do remember what boats were running in the St. Louis trade in 1853, the Pacific, the Alex. Scott, the Josiah Lawrence, the Grand Turk, the Atlantic, and others (all of which witness can name if required).

I neither bought nor sold a steamboat in Dec'r, 1852.

It was the custom of the World to insure on all her freight lists for their up trips. She always stood A No. 1 boat; she was so classed by all the underwriters; that is, no extra insurance had to be paid on her, she was insured the same as other boats in the trade.

I never bought a steamboat; I have sold one as agent for the captain.

Being asked if he ever made any through examination of the condition of the timbers, of the boilers, or of the machinery of the World, witness answers:—

I don't know anything about the boilers or machinery, but when I was in Cincinnati, and on the World on the ways, I went through her quite often. When a boat is lengthened, such general repairs are usually made to her that she becomes almost as good as new; when the work is done properly, I think she should last as long as though she was just built.

(Signed) A. D. MACAULAY.

Sworn to and subscribed at New Orleans, July 1st, 1856, before

(Signed) ROB'T M. LUSHER, U. S. Comm'r.

U. S. Dist. Court, Eastern Dist. of Louisiana.

ALEXANDER NORTON
vs.
Stm'r H. R. W. HILL *et al.* } No. 6853. In Admiralty.

Friday, May 30th, 1856. Before Ad'y Com'r. Present: P. E. Bonford, for libellant; L. Hunton, for claim't.

Testimony accompanying Admiralty Commissioner's Report.

John L. Macaulay, for libellants, sworn, deposes—

I am a commission merchant in this city, of the firm of Oglesby & Macaulay; have been in the business about 5½ years. I remember the fact of the loss of the World by collision with the H. R. W. Hill. Our firm had some flour on the World consigned to us; 400 barrels was the quantity. It was insured under our open policy in the "Millers' and Manufacturers' Insurance Company" of St. Louis.

We had received the bills of lading of this flour. I was also at St. Louis when it was shipped, and saw it, or a portion of it, go on the World. It was never received at New Orleans. We claimed its value of the underwriters at St. Louis as for a total loss, and I myself collected the money for it, $1,915 00. Chas. A. Tucker was President of the Insurance Company at that time. We had no other property on the World.

The settlement of the insurance was made as soon as the crew of the boat reached St. Louis and entered the protest. It was on the 27th Dec'r, 1852, that I collected the value of the flour.

I am acquainted with the value of steamboats, have been connected with such boats as an agent. I knew the W. World. In my opinion she was worth from 25 to $27,000 at time of her loss.

Cross-examined.

I think she was about two and a half years old. I don't know exactly when she was built, or whether she came out in 1849 or 1850, I can't say. At the time of her loss I would have given $25,000 for her. I decline answering what boats. I owned interests in steamboats. I don't know at what sum the World was insured. I think that Capt. Norton has said that she was insured at $15,000, but I am not positive.

Re-examined.

There is always a margin left by underwriters under the full value of boats in insuring them, I have understood. It differs in different offices.

On reflection, I think the World came out in 1848.

(Signed) JNO. L. MACAULAY.

Sworn to and subscribed at New Orleans, this 30th May, 1856, before

(Signed) ROBT. M. LUSHER,
U. S. Comm'r.

U. S. District Court, Eastern District of La.

ALEX. NORTON
vs.
Stm'r R. H. W. HILL *et al.* } No. 6853. In Admiralty.

Testimony accompanying Admiralty Commissioner's Report.

Depositions of Sam'l Stillwell, Wm. C. Kennett, Sam'l Engler, Dennis Marks, B. M. Hening, Néré Vallé, and R. M. Kercheval, for libellant taken, *de bene esse*, at St. Louis, Mo., and certified April 15th, 1856, by Benj. F. Hickman, Esq., U. S. Commissioner for Missouri District.

Deposition of Samuel Stillwell.

Interrogatory first. Had you any goods on board of the steamer Western World at the time she was lost on the Lower Mississippi River on Dec'r, 1852, or had you shipped any goods on her for the trip she made on that occasion?

Answer. I had goods on said boat on the trip referred to.

Interrogatory second. What was the character and description of these goods and their value?

Answer. I had twenty barrels of alcohol on board of her shipped to New Orleans from this port, and worth three hundred and eighty-three $\frac{33}{100}$ dollars.

Interrogatory third. What became of the alcohol?

Answer. It was lost, as I understood, by the sinking of the boat. I abandoned it to the underwriters.

Interrogatory fourth. Who were the underwriters? In what sum was it insured. What amount did they pay you for the loss, and when?

Answer. The Merchants' Mutual Insurance Company of St. Louis were the underwriters. It was insured for three hundred and eighty dollars, which sum that office paid me for the loss on the *the* 27th day of December, 1852.

Interrogatory fifth. Where do you reside, and how far from the State of Louisiana?

Answer. I reside in the city of St. Louis, Mo., and more than two hundred miles from any point of the State of Louisiana.

(Signed) SAMUEL STILLWELL.

Deposition of William C. Kennett.

Interrogatory 1st. Had you any goods on board of the steamboat Western World when she left this port in the month of December, 1852?

Answer. Yes, sixty-seven tierces of lard valued at twenty-four hundred dollars ($2400 00), destined for New Orleans, and totally lost by the sinking of the said steamboat Western World.

Interrogatory 2d. Had you any insurance on said goods, in what office, in what sum, and was the loss claimed and paid, and when?

Answer. The lard was insured in the office of the Merchants' Mutual Insurance Company, St. Louis, in the sum of twenty-four hundred dollars, and the loss paid to me in full on the 23d day of Decem'r, 1852.

Interrogatory 3d. Where do you reside, and how far from the nearest point of the State of Louisiana?

Answer. I reside in St. Louis, State of Missouri, and more than one hundred miles from the nearest point of Louisiana.

(Signed) WM. C. KENNETT.

Deposition of Samuel Engler.

Interrogatory 1st. Did you have goods on board the steamer Western World when she left this port on her last trip in the month of Dec'r, 1852? If yea, state the character and description of those goods and their value, what was their destination, and what became of them?

Answer. I had goods on board of said boat and on said trip, as follows: 370 bbls. flour, 16 hhds. shoulders, 13 hhds. hams, 1 bbl. rumps, and 84 bbls. lard; entire value $6,210 00.

Interrogatory 2d. Had you any insurance on said goods, in what office, in what sum, and was the loss claimed and paid, and when?

Answer. I had insurance on said goods in the Marine Insurance Company of St. Louis for an amount of $6,210 00, which amount was paid over to me by said company about the first of January, 1853.

Interrogatory 3d. Where do you reside, and how far from the nearest point in the State of Louisiana?

(Signed) SAMUEL ENGLER.

Deposition of Dennis Marks.

Interrogatory first. Had you any goods on board the steamboat W. World when she left the port on her last trip in the month of Dec'r, 1852? If yea, state the character and description of these goods, and their value, what was their destination, and what become of them.

Answer. I had two hundred and fifty barrels of flour on said trip, the value of which was twelve hundred dollars; the flour was destined for New Orleans, and was lost as reported to me by the sinking of said boat.

Interrogatory second. Had you any insurance on said goods, in what office, in what sum, and was the loss claimed and paid, and when?

Answer. I had an insurance on said flour in the Millers' and

Manufacturers' Insurance Company of St. Louis, in the sum of twelve hundred dollars, the loss was claimed by me and paid on the 24th day of December, 1852, by said company.

Interrogatory 3d. Where do you reside, and how far from the nearest point of the State of Louisiana?

Answer. I reside in the city of St. Louis, Missouri, and more than one hundred miles from the nearest point of the State of Louisiana.

(Signed) D. MARKS,
Agent for Luther C. Clark.

Deposition of R. M. Hening.

Interrogatory 1st. Had you any goods on board the steamboat Western World when she left this port on her last trip, in the month of December, 1852?

Answer. Yes, Jas. E. Woodruff & Co., of which firm I was a member, shipped on the steamer W. World, in the month of Dec'r, 1852, fifty-eight barrels pork, valued at $16 per bl., total valuation $928. The pork was destined for New Orleans, as I believe, was lost by the sinking of that boat.

Interrogatory 2d. Had you any insurance on said goods, in what offices, in what sum, and was the loss claimed and paid, and when?

Answer. The pork was insured one-half in the Western Sun Mutual Insurance Company, and one-half in the Floating Dock Insurance Company, say $464 in each company. The loss was collected by Jas. E. Woodruff & Co., and I think within sixty days after the sinking of the Western World.

Interrogatory 3d. Where do you reside, and how far from the nearest point of the State of Louisiana?

Answer. I reside in the city of Louis, State of Missouri, and more than one hundred miles from the nearest point of the State of Louisiana.

(Signed) R. M. HENING.

Deposition of Nerée Vallé.

Interrogatory 1st. Had you any goods on board of the steamer Western World at the time she was lost on the lower Mississippi River, in December, 1852, or had you shipped any goods on her for the trip she made on that occasion?

Answer. Yes.

Interrogatory 2d. If yea, what was the character and description of those goods and their value?

Answer. We had one hundred barrels of flour and twenty-five coils of rope, valued at six hundred and eighty dollars.

Interrogatory 3d. What became of them?

Answer. I do not know, but understood they were lost by sinking of the boat.

Interrogatory 4th. Had you any insurance effected on said goods?

If yea, in what sum, and on what office, and was the loss claimed and paid?

Answer. We had insurance effected on fifty barrels of flour and twenty-five coils of rope in the Merchants' Mutual Insurance Company, of this city, in the sum of four hundred and thirty dollars, which we received from said office on 28th Dec., 1852. We claimed a total loss, and our claim was allowed.

Interrogatory 5th. What firm or association of persons do you refer to in the preceding answers by the word *we*.

Answer. To the house of Chauteau and Vallé, of which I was then a member, and of which I am surviving partner.

Interrogatory 6th. Where do you reside, and how far from the State of Louisiana?

Answer. I reside in the city of St. Lo., Missri., more than 100 miles from any part of the State of Louisiana.

(Signed) NERÉE VALLÉ.

Deposition of Rudolph Ulrici.

Interrogatory 1st. Had you any goods on board the steamboat W. World at the time she was lost on the lower Mississippi, Dec'r, 1852, or thereabouts, or had you shipped any goods upon her on the trip commencing in Dec'r, 1852?

Answer. The firm of Richard W. Ulrici & Co., of which I was a member, shipped one hundred and fifty barrels of raw whiskey at the time mentioned in the above question.

Interrogatory 2d. What was the value of the whiskey so shipped?

Answer. Fifteen hundred dollars.

Interrogatory 3d. What became of the whiskey, and if lost, was it a total loss?

Answer. It was lost by the sinking of the boat, and I understood that it was a total loss, and our firm abandoned the said shipment to the underwriters.

Interrogatory 4th. Had you any insurance effected on said whiskey, and in what office or offices?

Answer. We had an insurance on said whiskey in the office of the Millers' and Manufacturers' Insurance Co., of St. Lo's, Missri., to the amount of fifteen hundred dollars.

Interrogatory 5th. Had you been paid for the loss of said whiskey by said insurance Co., and if yea, what amount?

Answer. Our firm has been paid for such loss, and paid the sum of fifteen hundred dollars, being the amount of insurance, as above stated.

Interrogatory 6th. Where is your present place of residence, and how far from Louisiana?

Answer. I reside in the city of St. Louis, Missri., and more than 200 miles from any part of Louisiana.

(Signed) RUDOLPH ULRICI.

Deposition of R. M. V. Racheval.

Interrogatory 1st. Did you have any goods on board the steamboat World when she left this port on her last trip in the month of Dec'r, 1852? If yea, state the character and description of these goods, and their value, what was their designation, and what became of them.

Answer. Hewitt, Rae & Co., of which the deponent was then a member, on 9th Dec'r, 1852, shipped at St. Louis, on steamer Western World, and consigned to Hewitt, Norton & Co., of the city of New Orleans, the following undermentioned property:—

United States, 96 New York, 50	146 barrels of superfine flour, insured at a value of	$736 00
S. M. Tinsley, 157 tcrs. do 1 bbl.	158 tierces and bbls. lard, insured at a value of	$5,168 00
Jas. L. Lamb L. Ashworth	182 bbls. of pork, insured at a value	$3,122 75
		$9,020 77

Say a total insured value of nine thousand twenty dollars and 77 cents.

These goods were, as deponent heard and believes, lost in the Mississippi River, on their voyage to New Orleans, their destination, by the sinking of said steamer Western World.

Interrogatory 2d. Had you any insurance on said goods; in what office, in what sum, and was the loss claimed and paid, and when?

Answer. As stated in my answer to first interrogatory, these goods were insured to the value of nine thousand and twenty dollars and 77 cents; the said insurance was effected in with the Merchants' Mutual Insurance Co. of St. Louis, and for the sum hereinbefore named. After sinking of the said steamer World, the loss was claimed, and subsequently paid (to wit, on the 23d Dec. 1852) by said Merchants' Mutual Insurance Company, to Hewitt, Reed & Co., in the city of St. Louis.

Interrogatory 5th. Where do you reside, and how far from the nearest point of the State of Louisiana?

Answer. I reside in the city of St. Louis, within the State of Mo., distant more than one hundred miles from the nearest point of the State of La.

(Signed) RO. M. V. KERCHEVAL.

The deponent omitted to state in the body of his deposition that in addition to the property stated Hewitt, Rae & Co., on said 9th Dec., 1852, did ship on said steamer World, and consign to Archibald Montgomery, of the aforesaid city of New Orleans, two hundred (200) barrels Albion Mills, insured at a value of one thousand dollars; said insurance was effected in the Merchants' Mutual In-

surance Co. of St. Louis, and was paid to Hewitt, Rae & Co., on aforesaid 23d Dec, 1852, by said Merchants' Mutual Insurance. The property having been lost and abandoned in consequence of the sinking of said steamer Western World.

(Signed) R. M. V. KERCHEVAL.

U. S. Dist. Court, Eastern District of Louisiana.

ALEXANDER NORTON vs. Steamer H. R. W. HILL *et al.* } No. 6853. In Admiralty.

Testimony accompanying Admiralty Commissioner's Report.

Deposition of John C. Powell, A. W. Fagan, John C. Bull, and Edgar Ames, for libellants, taken *de bene esse* at St. Louis, Missouri, and certified April 15th, 1856, by Benjamin F. Hickman, Esq., United Commissioner for Missouri District.

Deposition of Jno. C. Powell.

Interrogatory 1st. Had you any goods on board the steamer Western World when she left this port on her last trip in the month of Dec., 1852? If yea, state the character and description of those goods, and their value, what was their destination, and what became of them.

Answer. I had no goods myself, but my uncle and employer, for whom I was attorney in fact, had 308 bbls. flour on the boat on the trip mentioned, shipped the ninth day of December, 1852; this flour was valued at 4¾ per bbl.; was shipped to New Orleans, and I understood that it was lost on the boat when she sunk.

Interrogatory 2d. Had you any insurance on said goods, in what office, in what sum, and was the loss claimed and paid, and when?

Answers. E. B. Kimball, Esq., who was at that time acting as agent for the said Joseph Powell, insured the flour above referred to, in the Merchants' Mutual Insurance Co., of St. Louis, in the sum of fourteen hundred and sixty-three dollars, and accounted for and paid over to the said Joseph Powell, the said sum of fourteen hundred and sixty-three dollars, less the usual deduction of one per cent. for prompt payment, being the full amount of the loss claimed, on the twenty-fifth day of January, 1853.

Interrogatory 3d. Where do you reside, and how far from the nearest point of the State of Louisiana?

Answer. I reside in the city of St. Louis, and State of Missouri, and more than one hundred miles from the nearest point of the State of La. (Signed) JOHN C. POWELL.

Deposition of A. W. Fagan.

Interrogatory 1st. Had you any goods on board the steamboat World when she left the port on her last trip in the month of Dec'r, 1852? If yea, state the character and description of those goods

and their value. What was their destination, and what became of them?

Answer. I had two hundred and forty barrels of flour on the steamer World at the time mentioned in above question. The value of the flour was thirteen hundred and twenty-four dollars, and was shipped for New Orleans market, and was totally lost by the sinking of said steamer Western World.

Interrogatory 2d. Had you any insurance on said flour? In what office? In what sum, and was the loss claimed and paid, and when?

Answer. I had insurance on the said flour in the Phœnix Insurance Company of St. Louis, Mo., in the sum of thirteen hundred and twenty-four dollars. The loss was claimed by me and paid by said insurance company a few days after the loss was ascertained.

Interrogatory 3d. Where do you reside, and how far from the nearest point of the State of Louisiana?

Answer. I reside in St. Louis, Mo., and more than one hundred miles from any part of the State of Louisiana.

(Signed) A. W. FAGAN.

Deposition of John C. Bull.

Interrogatory 1st. Had you any goods on board the steamboat W. World when she left this port on her last trip in the month of Dec'r, 1852? If yea, state the character and description of these goods and their value. What was their destination, and what became of them?

Answer. I shipped on the Western World on the 8th Dec'r, 1852, fifty-four coils bale rope, the value of three hundred and fifty dollars. These goods were consigned to Waters, Camden & Co., New Orleans, for sale on my ac. I was informed by said house they were never reeceived by them, and I believe their loss by the sinking of the World was total.

Interrogatory 2d. Had you any insurance on said goods, in what office, in what sum, and was the loss claimed and paid, and when?

Answer. Said goods or rope was insured in the St. Louis Floating Dock and Insurance Company, in the sum of three hundred and fifty dollars. The loss was claimed and paid within thirty days after the loss of the boat.

Interrogatory 3d. Where do you reside, and how far from the nearest point of the State of Louisiana?

Answer. I reside in the city of St. Louis, and State of Missouri, and more than one hundred miles from the nearest point of the State of Louisiana. (Signed) JOHN C. BULL.

Deposition of Edgar Ames.

Interrogatory 1st. Had you any goods on board the steamboat Western World when she left this port on her last trip in the month of Dec'r, 1852? If yea, state the character and description of

these goods, and their value. What was their destination, and what became of them?

Answer. The firm of H. Ames & Co., of which I am a member, had on board the Western World at the time she left here in Dec'r, 1852, eighteen hogsheads of hams valued at seven hundred and fifty-three dollars. The hams were for the New Orleans market. We understood that these 18 hogsheads of hams were totally lost by the sinking of said boat.

Interrogatory 2d. Had you any insurance on said goods, in what office, and what sum, and was the loss claimed and paid, and when?

Answer. We had said goods insured in the St. Louis Floating Dock Insurance Co., for seven hundred and fifty-three dollars, which amount was claimed by us and paid to us by said insurance co. within sixty days from time of proof of loss.

Interrogatory 3d. Where do you reside, and how far from the nearest point of the State of Louisiana?

Answer. I reside in the city of St. Louis and State of Mo., and more than one hundred miles from the nearest point of the State of Louisiana. (Signed) EDGAR AMES.

U. S. Dist. Court, Eastern Dist. of La.

ALEX. NORTON vs. Stm'r H. R. W. HILL. } In Admiralty. No. 6853.

Assignments to Libellant referred to in Admiralty Com'r's Report.

Assignment to libellant by Merchants' Mutual Insurance Company on cargo, $14,693 77.

St. Louis, February 7th, 1853.

For a valuable consideration, the Merchants' Mutual Insurance Company sets over, sells, and by this conveys to Capt. Alex. Norton, all their right, title, and claim for damages against the steamer H. R. W. Hill, her owners, for the collision with the steamer Western World; said damage resulting to said company from shipments of cargo on said steamer Western World, in her trip from St. Louis to New Orleans, and which shipments amounted to the sum of fourteen thousand six hundred and ninety-three $\frac{77}{100}$ dollars.

This assignment is made without recourse on said insurance company, and is only to embrace the liability of said steamer H. R. W. Hill, after deducting any portion of said cargo which has been or may be recovered from said wreck.

In testimony whereof, the president and secretary of said company have hereunto subscribed their names, and said secretary hath hereunto affixed the seal of said company the date above.

[SEAL.] (Signed) H. C. BODLEY, President.
(Signed) ANDERSON MILLER, Sec.

Proof by R. M. V. Kercheval	$9,020 77
" "	1,000 00
Wm. C. Kennett	2,400 00
John C. Powell	1,463 00
Nerée Vallé	430 00
Sam'l Stillwell	380 00
	$14,693 77

(Signed) ROB'T M. LUSHER, Ad'y Com'r.

Assignment to libellant by Marine Insurance Company of St. Louis, on cargo, $6,210 00.

St. Louis, January 22d, 1853.

For a valuable consideration, the Marine Insurance Company of St. Louis sets over, sells, and by this conveys to Capt. Alexander Norton all their right, title, and claim for damages against the steamer H. R. W. Hill and her owners, for the collision with the steamer Western World, said damage resulting to said company from shipment of cargo on said steamer Western World, on her trip from St. Louis to New Orleans, and which said shipment amounted to the sum of six thousand two hundred and ten dollars.

This assignment is made without recourse on said insurance company in any event, and is only to embrace the liability of said steamer H. R. W. Hill and owners, after deducting any portion of said cargo which may be recovered from said wreck.

In testimony whereof, the president and secretary of said company have hereunto affixed their names.

[SEAL.] (Signed) JOHN FILDEN, President.
(Signed) D. HOUGH, Sec'y.

Proof by Sam'l Engler, shipper of 370 bbls. flour, 16 h'ds. shoulders, 13 h'ds. hams, 1 bbl. rumps, 84 bbls. lard, value $6,210 00.

Aug. 13, '56 (Signed) ROB'T M. LUSHER, Ad'y C'r.

Assignment to libellant by Millers' and Manufacturers' Insurance Company of St. Louis, on cargo, $6,715 00, Feb'y 7th, 1853.

For a valuable consideration, the Millers' and Manufacturers' Insurance Company sets over, sells, and by this conveys to Capt. Alex. Norton, all their right, title, and interest for damages against the steamer H. R. W. Hill and her owners, for the collision with steamer Western World, said damage resulting to said company from shipments of cargo on said steamer Western World, in her trip from St. Louis to New Orleans, and which said shipment amounted to the sum of six hundred and fifteen dollars.

This assignment is made without recourse on said insurance company, and is only to embrace the liability of said steamer H. R. W. Hill, after deducting any portion of said cargo which has been recovered from said wreck, or may hereafter be recovered.

In testimony whereof, the president and secretary of said company have hereunto subscribed their names and affixed the seal of said company, this seventh day of February, A. D. 1853.

[SEAL.] (Signed) J. A. BROWNLEE, President.
(Signed) HAM. OGDEN, Sec'y.

Proof by Jno. L. Macaulay, 400 bbls. flour,	$1,915 00
Dennis Marks, 250 bbls. flour,	1,200 00
R. Ulrici, 150 bbls. raw whiskey,	1,500 00
	$4,615 00

(Signed) ROBT. M. LUSHER, Ad'y Com'r.

Assignment to libellant by St. Louis Floating Dock and Insurance Company.

St. Louis, 22d Jan'y, 1853.

For a valuable consideration the St. Louis Floating Dock and Insurance Company sets over, sells, and by these presents conveys to Capt. Alex. Norton, all their rights, title, and claim for damages against the steamboat H. R. W. Hill and her owner by reason of the collision with the steamboat Western World, said damages resulting to said company from a risk on the hull of said steamboat Western World on her trip from St. Louis to New Orleans, and which said risk amounted to three thousand five hundred dollars on her hull, engines, cabin tackle and apparel and furniture, and the further sum of fifteen hundred and sixty-seven dollars on cargo contained in the said steamboat at the same time and covered by said company under cargo policies.

This sale, transfer, and assignment is made without any recourse on said company, and is only to embrace the liability of said steamboat H. R. W. Hill, after deducting any portion of said steamboat which has been or may be recovered from the wreck.

In testimony whereof the president and secretary of said company have hereunto subscribed their names, and said secretary has hereunto affixed the seal of said company on the day and year aforesaid.

[SEAL.] (Signed) WALKER R. CARTER, President.
Attest, (Signed) WM. G. PETERS, Sc'y.

Proof by R. M. Hening, on 58 bbls. pork,	$464 00
John C. Bull, on 54 coils rope,	350 00
Edgar Ames, on 18 hhds. ham,	753 00
	$1,567 00

(Signed) ROBT. M. LUSHER, Ad'y Commr.

Assignment to libellant by the Phœnix Insurance Co. of St. Louis on cargo, $1,511 75.

St. Louis, Jan'y 23d, 1853.

For a valuable consideration the Phœnix Ins'ce Co. sets over, sells, and by this conveys to Capt. Alexander Norton all their right, title and claim for damages against the H. R. W. Hill, and her owners for the collision with the steamer W. World, said damage resulting to said company from shipments of cargo on said steamer W. World on her trip from St. Louis to New Orleans, and which said shipments amounted to the sum of fifteen hundred and eleven $\frac{75}{100}$ dollars.

This assignment is made without recourse on said Ins'ce Co. in any event, and is only to embrace the liability of said steamer H. R. W. Hill, after deducting any portion of said cargo which may be recovered from said wreck.

In testimony whereof the president and secretary of said company have hereunto set their names the date first above written.

(Signed) JOHN HOW, President.
(Signed) W. H. PRITCHARD, Sec'y.

Proof by A. W. Fagan, 250 bbls. flour, $1,324 00
(Signed) ROBT. M. LUSHER, Ad'y Comr.

U. S. Dist. Court, East. Dist. of Louisiana.

ALEX. NORTON
vs.
Stmr. H. R. W. HILL. } In Admiralty, No. 6853.

Testimony for Claimants accompanying the Admiralty Commissioner's Report.

Testimony of R. L. Robertson on value of boats, and especially on that on the Western World.

Taken by consent June 24th, 1856. R. H. Marr for claimants; P. E. Bonford, Lib'llt.

Witness being sworn, says: I am inspector of hulls of steamboats; have been since 1830; I have a general knowledge of the value of steamboats; boats built at Louisville, Albany, and Cincinnati are generally better built and cost more than those built in Pennsylvania on the Ohio; the finish, materials, and workmanship are better; the New Albany boats have the highest character now, and suppose they had in 1847, 1848.

The lengthening of a steamboat would be generally to add to her value, because it would increase her capacity; the ultimate effect would be injurious. I have never seen one lengthened that was any time without being hogged.

At five years old, steamboats are generally worn out; there are a few exceptions, and very few. The boilers are generally worn out in five years. A boat of that age would be very well sold if she brought the cost of her machinery.

In testimony whereof, the president and secretary of said company have hereunto subscribed their names and affixed the seal of said company, this seventh day of February, A. D. 1853.

[SEAL.] (Signed) J. A. BROWNLEE, President.
(Signed) HAM. OGDEN, Sec'y.

Proof by Jno. L. Macaulay, 400 bbls. flour,	$1,915 00
Dennis Marks, 250 bbls. flour,	1,200 00
R. Ulrici, 150 bbls. raw whiskey,	1,500 00
	$4,615 00

(Signed) ROBT. M. LUSHER, Ad'y Com'r.

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St. Louis, 22d Jan'y, 1853.

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This sale, transfer, and assignment is made without any recourse on said company, and is only to embrace the liability of said steamboat H. R. W. Hill, after deducting any portion of said steamboat which has been or may be recovered from the wreck.

In testimony whereof the president and secretary of said company have hereunto subscribed their names, and said secretary has hereunto affixed the seal of said company on the day and year aforesaid.

[SEAL.] (Signed) WALKER R. CARTER, President.
Attest, (Signed) WM. G. PETERS, Sc'y.

Proof by R. M. Hening, on 58 bbls. pork,	$464 00
John C. Bull, on 54 coils rope,	350 00
Edgar Ames, on 18 hhds. ham,	753 00
	$1,567 00

(Signed) ROBT. M. LUSHER, Ad'y Commr.

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St. Louis, Jan'y 23d, 1853.

For a valuable consideration the Phœnix Ins'ce Co. sets over, sells, and by this conveys to Capt. Alexander Norton all their right, title and claim for damages against the H. R. W. Hill, and her owners for the collision with the steamer W. World, said damage resulting to said company from shipments of cargo on said steamer W. World on her trip from St. Louis to New Orleans, and which said shipments amounted to the sum of fifteen hundred and eleven $\frac{75}{100}$ dollars.

This assignment is made without recourse on said Ins'ce Co. in any event, and is only to embrace the liability of said steamer H. R. W. Hill, after deducting any portion of said cargo which may be recovered from said wreck.

In testimony whereof the president and secretary of said company have hereunto set their names the date first above written.

(Signed) JOHN HOW, President.
(Signed) W. H. PRITCHARD, Sec'y.

Proof by A. W. Fagan, 250 bbls. flour, $1,324 00
(Signed) ROBT. M. LUSHER, Ad'y Comr.

U. S. Dist. Court, East. Dist. of Louisiana.

ALEX. NORTON
vs.
Stmr. H. R. W. HILL. } In Admiralty, No. 6853.

Testimony for Claimants accompanying the Admiralty Commissioner's Report.

Testimony of R. L. Robertson on value of boats, and especially on that on the Western World.

Taken by consent June 24th, 1856. R. H. Marr for claimants; P. E. Bonford, Lib'llt.

Witness being sworn, says: I am inspector of hulls of steamboats; have been since 1830; I have a general knowledge of the value of steamboats; boats built at Louisville, Albany, and Cincinnati are generally better built and cost more than those built in Pennsylvania on the Ohio; the finish, materials, and workmanship are better; the New Albany boats have the highest character now, and suppose they had in 1847, 1848.

The lengthening of a steamboat would be generally to add to her value, because it would increase her capacity; the ultimate effect would be injurious. I have never seen one lengthened that was any time without being hogged.

At five years old, steamboats are generally worn out; there are a few exceptions, and very few. The boilers are generally worn out in five years. A boat of that age would be very well sold if she brought the cost of her machinery.

The machinery of an ordinary Ohio River steamboat, not finished in extra style, I estimate as being fully one-third the entire cost of the boat.

The larger portion of boats at five years old, are broken up; the cabin is sometimes transferable to another boat, and sometimes they are sold for wharf boats.

Being asked if you were told that this boat cost originally $33,000, that she was lengthened 60 feet in 1850, what would you say she was worth on the 14th December, 1852?

Answer. I fix the value with great reluctance, because there are other persons who have more information about this boat, and who are therefore better judges of her value—but I estimate her at $12,500 00 the 14th December, 1852.

Cross-examined.

(P. E. Bonford, Esq., examining and writing.)

I do not think myself competent to prove a correct opinion of the value of the Western World on the 14th of December, 1852; I know nothing of the size of her engines, or the condition of her machinery at that time; I do not know whether she was a double or single engine boat; I know nothing of the condition of her equipments, furniture, cabin, &c.—a knowledge of these things is essential to a proper estimate of her value; some boats are much better preserved when 5 years old than others; the former are, of course, worth relatively more money than the latter. A boat in her fifth year is in the midst of the business season, if in such a condition of repairs as to have insurance effected on her on the same terms as a first class boat, is worth more than the original cost of her machinery.

If the season were a good one, the Western World could have made $15,000 before its close; the making of the profits just mentioned depends on the management of the boat.

(Signed) RICH'D L. ROBERTSON.

Sworn to and subscribed at New Orleans, this 24th June, 1856, before (Signed) ROB'T M. LUSHER, U. S. Comm'r.

U. S. District Court, Eastern District of Louisiana.

ALEX. NORTON vs. Steamer H. R. W. HILL et al. } In Admiralty. No. 6853.

Testimony for Claimants, accompanying Admiralty Commissioners' Report.

Depositions of Thomas B. Smith and Capt. Silas F. Miller, taken Saturday, June 28th, '56, before Ad'y Comm'r. Present, R. H. Mann, for claimant. Libellant in pp.

Thomas B. Smith, a witness for the claimants, having been duly sworn, deposes:—

I am and have been for several years past, in New Orleans, a

steamboat agent for 20 years or thereabout—17 or 18; I think the nature of my business has made me a pretty good judge of steamboats; five years is about the lifetime of a western steamboat.

I recollect having seen the Western World; I never noticed her very particularly; I cannot describe what sort of a boat she was, having no special business with her.

Statement made, by Proctor, of time of building, burthen, time of lengthening, increased burthen, and time of loss of Western World (1852, 14th December)—witness says, she was near upon five years old it appears, and I shouldn't say such a boat was worth over $75,000.

The annual tear and wear of a boat depends on how she is built.

Steamboat stock began to rise in about 1852, I think.

Boats built at Cincinnati are better finished than those built at any point above.

There is a prejudice in the public mind against boats that have been lengthened, as it is impracticable, in the nature of things, that a boat lengthened should be as strong as one that is not.

Supposing that proper care has been taken of, and proper repairs made on a boat, I should say that, on her attaining her fifth year, she must have depreciated 50 per cent.

Cross-examined by Libellants.

I don't know when the Western World was built, nor how old she was when lost; don't know the size of her machinery or anything about it.

I don't consider a boat five years old, until she has actually attained that age.

I never was on the boat to examine her; I would not have considered her, from her general appearance, as an A No. 1 boat.

I don't know anything about the beam floor, or length of the Western World; I think she could carry 500 tons of freight up stream after she was lengthened; I suppose she could carry 600 down.

I know that there are such boat binders as Johnson and Morton, at Cincinnati; they do A No. 1 work when they are well paid for it.

I have never built a steamboat. If a steamboat is properly built from the beginning, she is then much better and stronger than she can ever be made afterwards by changes in her construction.

My impression is that the Western World, if built in 1847—1848, cost about $25,000; two years after, after she was lengthened, she may have been made a better business carrying boat, but she cannot have been stronger and more valuable—worth more as a boat—than when she was built. If she was properly lengthened and fastened, she was worth more than when she was first built in respect to her business capacity.

Re-examined.

Whether when a boat is lengthened she is overhauled as to the old part of the boat depends on what is agreed on at the time.

Supposing a boat to have been cut in the middle for lengthening the same rule applies.

When a boat has been thus lengthened, it is not likely that she would therefore last longer than she would if she had remained as she was originally built have received the ordinary summer repairs, lengthening does not add to the lifetime of a boat.

Cross resumed.

I am not of the opinion that the adding of clamps and extra fastenings necessarily increases the strength and value of a boat, as the extra weight thus in her counterbalances the benefit completely of a boat lengthened.

From 1848 to 1852 the rise in the cost of building boats was thirty per cent. I think.

(Signed) T. B. SMITH.
" ROBT. M. LUSHER,
U. S. Commissioner.

Silas F. Miller, also a witness for the claimants, having been duly sworn, deposes: I am a steamboat captain, and have been since 1840. I have frequently seen the Western World. She was a short boat when she first came out, and she was afterwards lengthened. I have had several boats built; superintended the building of four. I have never built boats at any place above New Albany; as far as my knowledge extends, the cost of building at New Albany, where the works is also finer, exceeds that at any other place. I contracted for the building of hulls at New Albany in 1848 and in 1852, and there was a very little difference in the price of the two periods. It was for the Robt. I. Ward that I contracted in May, 1852, and she was finished in February, 1853. Including unusual extra work outside of her hull by the hull binders, she cost, as to her hull, $1300 per ton. The cost of the hull of the Ward, a passenger and freight boat combined, and finished off very finely, was about $\frac{1}{3}$ of her whole cost. A simple freight boat would not cost so much, that is, her hull would bear a larger proportion to the whole cost.

I have never known any very fine boats to be built to go through the canal; they have a great deal of gingerbread work about them of very little cost. As these boats are generally built, the hulls cost about one-fourth of the whole cost of the boats.

The average length of time that a western boat is used is about five years; some are used shorter and some longer. When a boat of this age has done running, her value is not more than $\frac{1}{3}$d of her original cost.

During the first three years of a boat's running, supposing proper

care has been taken of her, and she has been properly overhauled each season, the depreciation in her original value is about 20 per cent. per annum; after that, the depreciation is considered less, for the reason that after she has done running she serves in various ways in the construction of a new boat, or may be used as a wharf boat.

Capt. R. L. Robertson's statement as to the building, tonnage, lengthening, &c., of the Western World read to witness, who says:)

In my opinion such a boat as is here described cannot, in Decr. 1852, have been worth over fifteen thousand dollars.

I have seen a good many boats that were lengthened, short ones into long ones, and I have never yet seen one that was not a failure.

To lib'll't. The W. World is included in this remark. I considered her a failure in every way.

The lengthening of a boat has no effect on her duration, the old part of her wears out just as quick as it would have done without the lengthening, and probably quicker.

I don't think the Western World had much reputation as a passenger boat in 1852.

The chief value of an old boat is in her machinery, her outfit, furniture, and tackle, anchors, chains, and blocks; her hull is worth only what it will bring as a barge or wharf-boat.

The timbers of a boat should always be in proportion to the general size of the boat. The timbers put in a boat at the time of her original building cannot, in my opinion, be adopted to a boat increased in tonnage by 300 tons. In lengthening a boat I don't know of any process by which greater strength can be given to the original timbers, except by doubling them, that is, the floor timbers of the boat, in which the strength would be needed. The doubling of the timbers would necessarily increase the draught of the boat.

The size of the America is 10 feet stroke, and 25 inches in diameter cylinders. The smaller the machinery the cheaper the engine.

Cross-examined by Libellant.

I remember that the Western World was running in 1848. I was aboard of her before she was lengthened. Her cabin was quite gaudily furnished—ginger bread work; didn't notice the furniture in her staterooms. I was on her after she was lengthened; once or twice in the cabin; she looked about as comfortable as before; the cabin longer.

I know nothing of her machinery except from hearsay. I never was in her hull; don't know how the work was done. I noticed her appearance frequently after she was lengthened; met her frequently, and remarked that she was very much hogged; that she didn't keep her shape.

I know nothing of her beam; she was about 180 feet long, when she first came out, on deck, judging from the locks through which she had to pass. She carried, I suppose, about 450 tons before she

was altered, and about 250 to 300 tons more after she was lengthened.

The America came out in 1848 or 49, I think. The Robt. I. Ward was 3 years old in the middle of February last; I won't consider her four years old until next February; and no boat do consider 5 years old until she is 5 y'rs old.

Re-examined.

Steamboat building costs in 1856, 50 per cent. more than it did in 1852. This of course adds to the value of all boats now running that have any capacity for business. I don't think there was much advance in the building of boats prior to last year.

I came out with the Bunker Hill, No. 3, in 1848, she costing me $13 per ton as to her hull, $24,000 in all; and she is still running, I believe. She was 232 feet long, drew but 3 feet, and carried 800 tons down stream. Old machinery which cost me $9000, bo't with the hull and cabin of the Bunker Hill, was used in her. The hull and cabin of the old Bunker Hill were given to the builder in addition to the $24,000.

Her machinery was 19 inches in diameter, and 9 feet stroke.

(Signed) SILAS F. MILLER.
(Signed) ROBT. M. LUSHER,
U. S. Comm'r.

Close of testimony. R. M. L.

U. S. District Court, East. Dist. of Louisiana.

ALEX. NORTON vs. St'm'r H. R. W. HILL et al. } No. 6853. In Admiralty.

Claimants' Exceptions to Report of Admiralty Commissioner.

Filed Aug't 20th, 1856.

Now come Thomas H. Newell, James W. Dyas, and Amelia Hamilton, claimants and respondents in the above entitled cause, by their undersigned proctor, and except to the report, assessment, and schedule of damages herein made by Robert M. Lusher, U. S. Commissioner, and filed on the fourteenth day of August, 1856, on the following grounds: First. To so much of the said report as fixes and allows the sum of $25,000 for the value of the steamboat Western World, her apparel, &c., because the said valuation is not supported by, but is contrary to the proof, and is illegal and excessive. Second. To so much of the said report as fixes and allows the sum of $2,600 for the "freight list, actual loss of realizable earnings of the trip," because the trip proof does not sufficiently show the amount of freight that would have been carried if the boat had arrived safely at her port of destination and delivered her cargo in good order and condition, because the earning of freight depended upon the arrival of said boat Western World at her port of destination, and the due delivery there of her cargo, contingencies which might not have hap-

pened from causes independent of the collision, cannot legally enter in and form part of the damages to be awarded by the admiralty. Third. To so much of the said report as fixes and allows the sum of $6.50 for passage money for the same reasons as above stated with respect to the freight. Fourth. To so much of the said report as fixes and allows the sum $2100 for cash in the safe of the Western World, because the proof is not sufficient to establish the amount of cash in the safe; there was ample time and opportunity after the collision to have saved it; and the loss of the cash, if any such loss occurred, did not result from the collision, but from the negligence and fault of those in charge of the Western World in not recovering the same as they might and should have done after the collision.

Fifth. To so much of the said report as fixes and allows the sum of $28,409 77, for loss on cargo purporting to have been insured at St. Louis, upon the alleged assignment of the underwriters to the libellant, because the proof is not sufficient to show the amount insured on the cargo, nor amount of the loss, nor the abandonment by the respective owners, nor the acceptance of the abandonment, if any were made, because the proof is not sufficient to justify a recovery by the underwriters; because demands and liens cognizable in the admiralty cannot be transferred; because the right to proceed in the admiralty for any loss or injury is personal, and cannot, by contract, be vested in any other than the person sustaining the loss or injury; and because the admiralty has no jurisdiction respecting the said assignments.

And the said claimants and respondents further except to the whole of the said report, assessment, and schedule, upon the ground that the several amounts allowed each and all of them are unsupported by the proof, are not properly allowable, and are illegal and excessive.

Wherefore they pray that the said report be corrected by the decree of the court without further reference. And these approvers ask for all such other proceedings and orders touching the errors in the said report as equity, and the rule of this honorable court may require and allow.

(Signed) R. H. MARR,
One of the Proctors for Claimants.

U. S. Dist. Court, East. Dist. of Louisiana.

No. 6853. In Admiralty.

Stated sessions, 1856, November Term. Friday, November 29th, 1856, court met at 10 A. M. Present, Hon. Theo. H. McCaleb.

ALEX. NORTON
vs.
Stm. H. R. W. HILL et al. } 6853

Question of Damages.

The claimants' exceptions to the admiralty commissioner's report

came regularly up for hearing by consent, R. H. Marr, Esq., arguing in support of the exceptions, and P. E. Bonford, Esq., for the libellant, in opposition thereto, and in support of the commissioner's schedule, when the court took the whole matter under advisement.

U. S. Dist. Court, Eastern Dist. of Louisiana.

Tuesday, Dec'r 9th, 1856. Present, Hon. Theo. H. McCaleb.

ALEX. NORTON, owner of Stmr. Western World
vs.
Stmr. H. R. W. HILL Claimants and sureties, and THOMAS H. NEWELL, Master.

No. 6853.
In Admiralty.

Final Decree.

The court having taken under advisement, and carefully examined and considered the claimants' exceptions to the admiralty commissioner's report and assessment, and being satisfied from an examination of the evidence and the law bearing on the case, that the assessment of the commissioner is correct, and that the libellant is entitled to recover the full amount claimed in his libel, namely, the sum of fifty-seven thousand dollars.

And it appearing of record, that the steamer H. R. W. Hill, on which the libellant laid a lien and privilege for the satisfaction of his demand, was released from seizure herein March 15th, 1853, on a bond or admiralty stipulation, executed by Thomas H. Newell, part owner, on his behalf, and also on that of James W. Dyas, of New Orleans, and Amelia Hamilton, of Nashville, Tenn., the other owners of said boat and claimants thereof, as principals, and by H. R. W. Hill and Robert Dyas, of New Orleans, as sureties, in the sum of $52,500 00, the appraised value of said boat, whereby the said claimants and sureties did jointly and severally bind themselves, their heirs, executors, and administrators, to pay the said libellant the amount awarded by the final decree in this cause.

And it appearing further that Thomas H. Newell, as master of said boat, was cited according to law, to answer the demand of the libellant.

Now, therefore, the court doth order and adjudge, and it is hereby accordingly ordered, adjudged, and decreed, that the libellant, Alex. Norton, receive of and from said claimants and sureties, and the respondent, Thomas H. Newell, the full sum of fifty-seven thousand dollars, and costs of suit to be taxed by the clerk; and that for the recovery of fifty-two thousand five hundred dollars of said amount, he be entitled to process of execution against the above named claimants and sureties, jointly and severally, their respective heirs, executors and administrators, according to the tenor of said bond or

admiralty stipulation, of March 15th, 1853, now of record in this court.

Stated Sessions 1856, November Term, Friday Dec. 12th, 1856.

ALEXANDER NORTON, owner of Steamer Western World vs. Stm'r H. R. W. HILL, and THOS. H. NEWELL, master.	No. 6853. In Admiralty.

Appeal.

On motion of Logan Hunton and R. H. Marr, Esqs., Proctors for the claimants in the above entitled cause, and on showing to the court that a final decree has been rendered in said cause, against said claimants, for a sum exceedingly fifty thousand dollars; that at the time of the delivery of the steamer H. R. W. Hill to claimants, they gave bond and stipulation according to law, and *and* the practice of this hon. court, with good and solvent security for the sum of $52,500, the value of said boat, as found by a due appraisement thereof; that the decree rendered by this hon. court, Dec. 9th, is against claimants and their sureties in solido for the sum of fifty-two thousand five hundred dollars, and against Thomas H. Newell, one of the claimants, for the sum of fifty-seven thousand dollars, and that the security already given covers the whole amount awarded by said decree to the libellant, except the sum of four thousand five hundred dollars, being the difference between the amount of said bond and stipulation, and the amount of decree against said Thos. H. Newell, and on their further showing that the said claimants desire to take a suspensive appeal from said final decree, which they are advised is erroneous, and by which they are aggrieved.

It is now ordered by the court that a suspensive appeal be allowed to said claimants, returnable to the next term of the Circuit Court of the United States for the 5th Circuit, to be holden in this District, on the fourth Monday of April, 1857, on claimants' giving bond and stipulation, with good and solvent security in the sum of five hundred dollars, conditioned to pay the costs and expenses of said appeal, and on Thomas H. Newell's giving bond and stipulation, with good and solvent security in the sum of five thousand dollars, conditioned to pay the difference between the amount already secured by the original bond and stipulation, executed by claimants; and that a transcript of the record and proceedings in the cause, duly authenticated, may be sent to the said Circuit Court, and that twenty days be allowed for the execution and filing of said bonds.

United States Dist. Court, East. Dist. of Louisiana.

ALEX. NORTON
vs.
Stm'r H. R. W. HILL. } No. 6853. In Admiralty.

Claimants' Appeal Bond for $500.

Filed 13th Dec., 1856.

Know all men by these presents, that we, Thomas H. Newell, Amelia Hamilton, and Jas. W. Dyas answers, and claimants in the above cause of the steamer H. R. W. Hill, and Robert Dyas and James D. Hill, heir at law of H. R. W. Hill, dec'd, sureties on the bond executed for the release of said boat on the 13th of March, 1853, and now of record, as principals, and H. T. Lonsdale and John R. Shaw, of New Orleans, as sureties, are held and firmly bound unto Alex. Norton, libellant, of N. O., in the sum of five hundred dolls., to be paid to the said Alex. Norton, his heirs, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Dated at New Orleans, this 13th day of December, in the year of our Lord one thousand eight hundred and fifty-six.

Whereas, the above bounded Thomas H. Newell, Amelia Hamilton, James W. Dyas, Robert Dyas, and James D. Hill, heir at law of H. R. W. Hill, have appealed to the Circuit Court of the United States for the Eastern District of Louisiana, from a final decree of the District Court of the United States for the said District, bearing date the ninth day of December, A. D. 1856, in the said cause, in which Alex. Norton was libellant, and the said Thomas H. Newell, Amelia Hamilton, and James W. Dyas were claimants of the steamer H. R. W. Hill, and the said Thomas H. Newell as master thereof, also respondent.

Now, therefore, the condition of this obligation is such, that if the above named appellants shall prosecute their appeal with effect, and pay all such costs and expenses as shall be awarded against them as such appellants therein, then this obligation to be void, otherwise to remain in full force and effect.

THOS. H. NEWELL,
AMELIA HAMILTON,
(Signed) by R. H. MARR, Proctor, [SEAL.]
" J. W. DYAS, [SEAL.]
" ROBT. DYAS, [SEAL.]
" H. T. LONSDALE, [SEAL.]
" JOHN R. SHAW, [SEAL.]
JAS. DICK HILL,
By his agent and att'y in fact.
(Signed) JNO. M. BASS.

Signed and delivered by Robt. Dyas, H. T. Lonsdale, J. A. Shaw, in presence of
(Signed) R. H. MARR.

Witness to signature of Jno. M. Bass, ag't.
(Signed) C. T. ESTLIN.

U. S. Dist. Court, East. District of Louisiana.

ALEXANDER NORTON
vs.
Stm'r H. R. W. HILL *et al.*
No. 6853. In Admiralty.

Respondents' Appeal Bond for $5,000 00.

Filed Dec'r 18th, 1856.

Know all men by these presents that we, Thomas H. Newell (as master in the above cause of the stm'r H. R. W. Hill), of Tenn'e, as principal, and Robert Dyas, and A. J. Dyas, of New Orleans, as sureties, are held and firmly bound unto Alex. Norton, libel't, of New Orleans, in the sum of five thousand dollars, to be paid to the said Alex. Norton, his executors, administrators, or assigns, to which payments, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Dated at New Orleans this 18th day of Dec'r, in the year 1856.

Whereas, the above bounded Thomas H. Newell has appealed to the Circuit Court of the U. S. for the 5th Circuit and Eastern District of Louisiana, from a final decree of the District Court of the U. S. for the said District sitting in Admiralty, bearing date the ninth day of Dec'r, 1856, in the said cause in which Alex. Norton was and is libellant, the owners of the said stm'r H. R. W. Hill (Thos. H. Newell, Amelia Hamilton, and Jas. W. Dyas) claim'ts, and Thos. H. Newell, as master of said stm'r H. R. W. Hill, respondent, by which said decree the said respondent is condemned to pay to libell't the sum of $4,500 00 over and above his obligation as one of the claimants in said cause.

Now, therefore, the condition of this obligation is such, that if the said Thos. H. Newell, respondent, as appellant, shall prosecute his appeal with effect and pay such decree of damages, costs, and expenses as shall be awarded against him, then this obligation to be void, otherwise to be and remain in full force, virtue, effect.

(Signed) ROB'T DYAS. [SEAL.]
(Signed) T. H. NEWELL. [SEAL.]
(Signed) By R. H. MARR. [SEAL.]
(Signed) A. J. DYAS. [SEAL.]

Signed and delivered in presence of
(Signed) R. H. MARR.
" R. M. McALPIN.

UNITED STATES OF AMERICA,
Eastern District of Louisiana.

U. S. District Court, Clerk's Office, New Orleans.

I, N. R. Jennings, Clerk of the said court, do hereby certify that the foregoing 617 pages, manuscript, contain and form a true and correct transcript of the record of said court in the case of Alexander Norton, owner of the steamer Western World, lost by collision Dec'r 14th, 1852, *vs.* the steamer H. R. W. Hill and Thomas H. Newell, master, in Admiralty, No. 6853 of the docket of said court.

In testimony whereof I hereto set my hand and affix the seal of said court at New Orleans, this twenty-fifth day of April, 1857.

[SEAL.] (Signed) N. R. JENNINGS, Clerk.
By ROBT. M. LUSHER, Dep. Cl'k.

Submission of Cause.

Circuit Court of the U. States, Fifth Circuit and Eastern District of La., April term, 1858.

New Orleans, Thursday 10th June, 1858. Court met pursuant to adjournment. Present: Hon. J. A. Campbell, presiding Judge. Present: Hon. Theo. H. McCaleb, district Judge.

ALEXANDER NORTON
vs. } 2747.
Steamer H. R. W. HILL.

Before Hon. J. A. Campbell.

This cause was argued by P. E. Bonford, Esq., for libellant and R. H. Marr, Esq., for respondents, and was submitted to the court.

Libellants' Evidence.

ALEXANDER NORTON
vs.
The St'mboat H. R. W. HILL, &c.

Deposition of R. M. Grider.

R. M. Grider, being duly sworn deposes and says, That he is weigher and inspector of hay in this city; is acquainted with Henry Evans; has known him for ten or twelve years; Evans has pursued the occupation of a flat boat pilot during that time; Evans came from near Aurora, in Dearborn County, Indiana; deponent is well acquainted at Aurora; knows almost every one there; has always heard Evans well spoken of in that place; has never heard anything disreputable about him; his character for truth is good; has had no business transactions with him; would believe him under oath as soon as any one.

Cross-examined.

Deponent has lived in New Orleans since the fall of 1847; has

lived here constantly since that time; was at Aurora two or three times last summer, and two or three times summer before last; has handled the greater part of the hay that comes from that place; never was at the house of Evans there; does not know that he keeps house there; deponent's business there was to see the shippers of hay; previously to living here, deponent lived at Bowling Green, Kentucky, about 75 miles from the Ohio River; does not recollect any single instance in which the character of Henry Evans for truth and veracity was the subject of conversation between witness and any persons at or from Aurora; has spoken of Evans' character with Mr. Cheek; Mr. Cheek comes from Aurora; he spoke highly of Evans; this was about five or six weeks ago, since Mr. Cheek returned from the West. R. M. GRIDER.

Sworn to and subscribed before me, March 11th, A. D. 1857.
CHAS. M. BRADFORD,
J. Peace.

Taken by consent.
R. H. MARR.

Testimony of Hiram Coxe.

Filed 8th June, 1858.

U. S. D. Court.

ALEXANDER NORTON
vs.
Steamboat H. R. W. HILL. } In Admiralty.

Testimony of Hiram Coxe, taken by consent. Is a flat-boatman; lives in Aurora, Dearborn County, Indiana; is acquainted with Henry Evans; has known him fifteen years; is personally acquainted with him as a flat-boatman; knows Mr. Evans to be a flat-boat pilot; knows him to be a good pilot, as good a pilot as there is in the flat-boat business on the Mississippi River; is acquainted with his character; lived within two or three miles of Mr. Evans about fifteen years; says Mr. Evans has a good character for truth and veracity; never heard anything against his character from a reliable source; would believe him on oath as soon as any man.

Cross-examined.

Was not in New Orleans when Mr. Evans landed in New Orleans soon after the loss of the Western World; do not know anything about what he picked up from the wreck; knows nothing about any difficulty he had with his crew about what he picked up from the wreck; have heard that he had some difficulty of that sort, but do not know what it was about, or any of the particulars; do not know that those who spoke of the matter called in question Evans's veracity and integrity; Evans's character for honesty and for veracity

was never the subject of conversation in my presence that I recollect of.

HIRAM COX.

Sworn to and subscribed before me March 23d, 1857.

C. M. BRADFORD, J. P.

By consent. R. H. MARR.

Deposition of Philip Buffington and John Sutton.

ALEXANDER NORTON
vs.
The Steamboat H. R. W. HILL *et al.*

Philip Buffington being duly sworn, deposes and says, that he is a flat-boat pilot; that he resides in Dearborn County, Indiana; was well acquainted with Henry Evans, who came from the same county as deponent; they were raised together; deponent has known Evans from childhood; his occupation was that of a flat-boat pilot; his character was always considered good in the community in which he lived; he was regarded as a trustworthy man; owners were in the habit of giving him charge of cargoes for sale; from deponent's knowledge of Evans's character for truth he would have no hesitation in believing him under oath; deponent has heard from very good authority that Evans is dead; that he died in August last.

Cross-examined.

Has heard Evans's character spoken of as the subject of conversation when parties spoke of shipping their produce, and to whom they would trust, but has never heard specially his character for truth and veracity spoken of; never heard his honesty called in question at Aurora by any one; is not related to Evans.

PHILIP BUFFINGTON.

Sworn to and subscribed before me the 24th day of March, 1857.

JOHN W. ANDREWS, 3d J. Peace.

John Sutton being duly sworn, deposes and says he resides in Jeffersonville, Clarke County, Indiana; deponent's occupation is that of a steamboat pilot; knew Henry Evans since he was a boy, he came from near Aurora in Dearborn County, Indiana, he was a flat-boat pilot; deponent has had ample opportunity of knowing Evans's character for honesty and truthfulness; would undoubtedly have believed Evans under oath; has understood that Evans is dead.

Cross-examined.

Jeffersonville is about 120 miles from Aurora; has not been at Evans's house for the last five or six years; thinks that Evans has not been a housekeeper within that time; but Evans has been at deponent's house; was at Aurora for a period of two months during the past summer; witness's family is there; has never heard Evans's

character for truth and veracity spoken of by his neighbors. Being asked if he has heard any reports prejudicial to Evans's character, says: he has heard nothing but some vague report about Evans's picking up some freight of the Western World when she was lost, but attributed no importance to it; heard this some time after the accident.

his
JOHN + SUTTON.
mark.

Sworn to and subscribed before me this 24th day of March, 1857.
JOHN W. ANDREWS, 3d J. Peace.

Taken by consent. R. H. MARR.

Deposition of Nelson and Cheek.

ALEXANDER NORTON
vs.
The steamboat H. R. W. HILL.

Robert T. Nelson being duly sworn, deposes and says, that he is a pilot by profession; is well acquainted with Henry Evans; has known him for the past ten years; Evans is a flat-boat pilot; has always heard him spoken of as a very good man; as one who understands his business well, and as of very good character; he has travelled several times with deponent on steamboats, during which times deponent saw a good deal of him; witness's opinion of him is that he is a sober and industrious man; deponent would have no hesitation to believe him under oath.

Cross-examined.

Evans lives in Aurora, Indiana; deponent does not live in Aurora; has never been at Evans's house there; got acquainted with him transiently on the river; has never been at Aurora more than two or three hours there at a time; Evans has travelled with deponent four or five times up from this city to Aurora; has been with him at Cincinnati as much as three or four days together; Evans is the same person he presumes who had some litigation in this city with his hands in relation to salvage of portions of the cargo of the Western World; has never had any business transactions with Evans. R. T. NELSON.

Sworn to and subscribed before me April 8th, 1857.
C. M. BRADFORD, J. Peace.

Mack Cheek being duly sworn, deposes and says, that he is a general trader on the river; has resided for the greater part of the business seasons of the past five years in this city; deponent is well acquainted with Henry Evans; was born and raised in the neighborhood of Evans's residence near Aurora, Dearborn County, Indiana; deponent has known Evans from his childhood; Evans's business has been that of a flat-boat pilot; Evans's character in the

community in which he lived has always been good; deponent has never heard anything against him; Evans has flat-boated for deponent; in all his business transactions with witness, Evans has proved himself faithful and honest; his character for truth is good; would have no hesitation in believing him under oath.

Cross-examined.

Deponent is a man of family; his family are now at Aurora, Indiana; never heard his character questioned at Aurora, nor elsewhere; heard something about the salvage suit; don't know what it is.

MACK CHEEK.

Sworn to and subscribed before me March 27, 1857.

C. M. BRADFORD, J. P.

Taken by consent. R. H. MARR.

Deposition of Thornton Thompson.

Filed June 3d, 1858.

U. S. Circuit Court, East. Dist. of La.

ALEXANDER NORTON

vs.

The Steamboat H. R. W. HILL, her Captain and Owners.

W. Thornton Thompson, being duly sworn, deposes and says: I am a civil engineer and surveyor. I made a survey of the Mississippi River at the place where the collision occurred between the Western World and the R. H. W. Hill. This was in the vicinity of Princeton bar. I made a map or plan of this survey, which I believe was used in the District Court. I preserved the field notes from which the map was draughted. The plan I now produce and marked X is a duplicate of the one I made before, as near as I could produce it; it is made from the same field notes. The principal differences between the two is that the former is colored and this one is not, and the former had the courses and distances on it, which this has not. The map is a correct representation of the locality; it is based upon actual observation and measurements by me.

Cross-examined.

I took no notice of the eddy of the river. I cannot state where the eddy commences, or how wide it is, or how far down it extends.

Re-examined.

When I made the survey in February, 1854, there was a fourteen feet bank on the Arkansas side, inside of Arkansas bar. I did not measure the height of the bank on the other side. I cannot state whether the river was then higher or lower than at the time of the collision. W. THORNTON THOMPSON.

Sworn to and subscribed before me, May 31, 1858.

C. M. BRADFORD, J. P.

Note.—For map X, see ante, page 29.

Depositions of Charles Okey and Chas. S. Peterson.

Taken April 17th, 1858, filed 21 May, and opened in court 8th June, 1858.

United States of America, Eastern District of Louisiana, City of New Orleans, ss.

Be it remembered, that on this seventeenth day of April, in the year of our Lord one thousand eight hundred and fifty-eight, before me, Robert M. Lusher, a commissioner duly appointed, on the 29th April, 1848, by the Circuit Court of the United States, in and for the Fifth Circuit and Eastern District of Louisiana, under and by virtue of the acts of Congress entitled, "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20, 1812; and the act of Congress entitled, "An act in addition to an act entitled, 'An act for the more convenient taking of affidavits and bail in civil causes depending in courts of the United States,'" passed March 1st, 1817; and the act entitled, "An act to establish the judicial courts of the United States," passed September 24, 1789; personally appeared in my office, Charles Okey and Charles S. Peterson, persons of sound mind and lawful age, witnesses for the libellant in a civil suit now depending in the Circuit Court of the United States, in and for the Fifth Circuit and Eastern District of Louisiana, wherein Alex. Norton, owner of steamer Western World, &c., is libellant and appellee, and the owners of steamer H. R. W. Hill, and Thomas H. Newell, master, are respondents and appellants; and the said witnesses being by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say, respectively, as follows:—

In U. S. Circuit Court, 5th Circuit and Eastern District of Louisiana.

ALEX. NORTON, owner of steamer Western World, vs. Stmr. H. R. W. HILL and Master. } 6853.

P. E. Bonford, Esq., for libellant; R. H. Marr, Esq., for claimants and Respo'ts.

April 17, 1858.

Charles Okey, a witness for the libellant (appellee), having been duly sworn, deposes:—

I am a steamboat pilot, and have been for many years.

I recollect the occurrence of a collision between the Western World and the H. R. W. Hill.

I know Mr. William Porterfield, of Vicksburg, Mississippi; I heard him make some allusion to a conversation with some flat-boat man or flat-boat captain, about the collision.

(Proctor for respondents objects to their testimony on the ground that no basis was laid for such an examination in the taking of the testimony of Wm. Porterfield.)

My conversation with Mr. Porterfield just referred to, took place some time within the last 18 months. He said that a flat-boat man had come down and told him something about the collision, but that he did not know the man or remember the circumstances narrated by him, and that he would not know the man if he met him on the street. I think Porterfield said that he would be subpœnaed, or something of that kind, but I don't think that he said that his testimony had been taken; he expected, I think, to be a witness in the case. He didn't say what would be the value of his testimony, that I recollect. He said that the man's name was Evans—that the man had given him his name, or that he had his name, or something so that effect.

Cross-examined.

This conversation took place directly in the door of Holt's coffee house. It was not a private conversation, other persons were present; there were a great many persons about, but I don't know that any one heard the conversation but Mr. Alex. Norton—Capt. Alex. Norton, Porterfield, and myself had been taking a drink there at Holt's. I met Porterfield and Norton right there at the house; they had been there together before I got there; we happened to meet there, and within a half a minute we went in together and took a drink—Porterfield treating I think. After we had taken the drink, Capt. Norton said to me, "I am going to ask Porterfield a question, notice what he says" (I wrote it down in my head just then, or I wouldn't be able to recollect it). Norton asked Porterfield questions about the man Evans; and what I have stated in my direct testimony, is my recollection of Porterfield's replies to Norton's questions on that occasion.

I don't think that Porterfield heard Norton's remark to me, viz., "I am going to ask Porterfield a question; notice what he says." It was a private remark addressed to me.

It was some time in 1857 that this conversation took place; I can't tell within six or seven months in what month it took place; it may possibly have occurred in 1856; I paid no attention to the time.

Direct examination resumed.

The meeting was altogether accidental on my part.

CHARLES OKEY.

ROBERT M. LUSHER,
U. S. Commissioner.

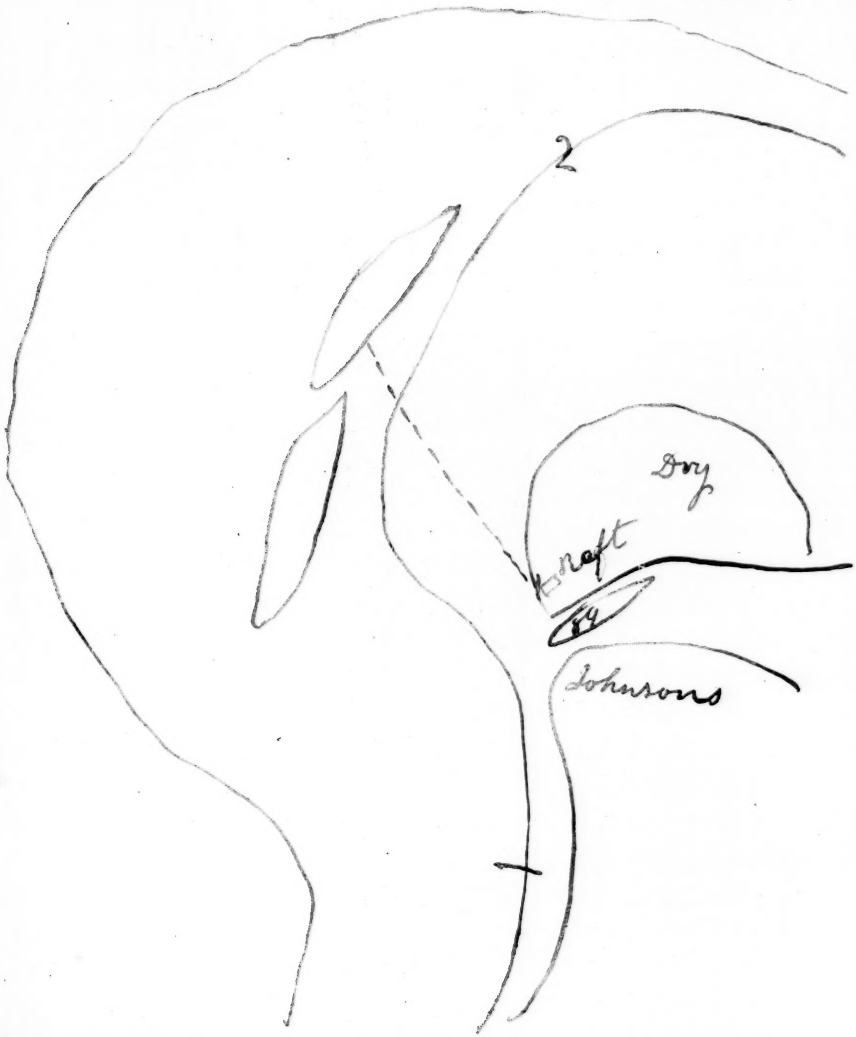
Charles S. Peterson, for libellant (appellee), having been duly sworn, deposes—

I have been steamboating for the last 25 years, as pilot and master.

I recollect the collision between the Western World and the H. R. W. Hill; I was then commanding the steamer Iroquois; this collision was said to have taken place about or near at the head of

No 273 - pa. 513

Sketch. A - Robt. M. Lusher
U. S Comr.



Princeton bar; I was in the vicinity of that place a few days after the collision.

I know that there was a raft aground about there; it was on the Arkansas bar, on the Arkansas side, below the head of island 89, but on the bar formed on the side of this island. This raft was fully half a mile below Johnson's house (a planter there). I suppose that this raft lay 350 yards to a ¼th of a mile out from the timber on the island.

I was going up stream, and was hailed by the owner and two other persons (of the raft) from the main shore at Johnson's. I landed, and took them on board; one of the men was named McKnight; him I knew personally before; the others' names I cannot now recollect; McKnight lived in the head of Cypress Bend, about 22 miles below Napoleon, Arkansas; I put them all out there; McKnight then kept a woodyard there.

Cross-examined.

From where the raft lay to where there was a naked shore on the island, the distance was about 150 yards.

(For sketch "A" drawn by witness, see original, page 513.)

An up-stream boat should have run about 250 to 300 yards from the raft (about 18 feet of water depth) in about a line corresponding to the prolongation of the shore, in a straight line from the point where Johnson's is. At the time of the collision, the distance from where the raft lay to Carolina landing was about 3½ to 4 miles. To the low place in Princeton bar (which I recollect), the distance from the raft must have been at least a mile. The low place to which I refer is a slough when the water is high; this place, at the time of the collision, was known to pilots as a "low place" on the bar.

It was between five and seven days after the collision that I passed up by Princeton bar, and picked up the men referred to. I was in New Orleans when the collision occurred; and my boat, the Iroquois, left the day after the H. R. W. Hill reached this port (after the collision); and I think it took me 3 to 3½ days to run up to Princeton bar.

Direct resumed.

The general course of an up-stream boat about Princeton bar is to follow the course of the Arkansas bar. The course of a down-stream boat I have indicated on the sketch (line 1 to 2).

The low place to which I have referred was about half a mile below a point on Princeton bar, immediately opposite (across the river) to where the raft lay.

The floating of freight to Carolina landing would indicate, in my opinion, that the collision occured in the channel of the river close to Princeton bar; such is the course of the current there.

Cross-examination resumed.

The place where goods would land under such circumstances would depend considerably on the winds prevailing at the time. A strong west wind, at the time of the collision, would have caused goods to be landed higher up than Carolina landing; and, if there had been no wind at all, nothing would have landed at Carolina landing.

Between Johnson's and Carolina landing, I know of no point at which goods, being put afloat, would of their own accord float to and land at Carolina landing, unless it should be close to the head of Princeton bar (about opposite Johnson's). Goods put afloat at the head of Princeton bar would pass down the bar, and would not get into the current until after passing Carolina landing; 100 yards was about the width of dead water then between Carolina landing and the current.

CHAS. S. PETERSON.

ROBT. M. LUSHER,
U. S. Commissioner.

I, Robert M. Lusher, U. S. Commissioner, duly appointed as aforesaid, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the rules prescribed for circuit courts, in cases of appeal, require that all testimony be reduced to writing.

I further certify, that on this 17th day of April, A. D. 1858, I was attended by P. E. Bonford, Esq., for libellant, and R. H. Marr, Esq., for respondents, and by the witnesses Chas. Okey and Chas. S. Peterson, who are of sound mind and lawful age, and the said witnesses were by me carefully examined, and cautioned, and sworn to testify the whole truth, and the depositions hereinbefore appearing were by me reduced to writing, in the presence of the witnesses, and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession, for the purpose of sealing up, directing, and forwarding the same, with my own hand, to the court for which the same are taken.

I further certify, that I am not of counsel or attorney to either of the parties in said deposition and caption named, or in any way interested in the event of the said civil cause named in the caption.

In testimony whereof I have hereunto set my hand and seal, at New Orleans, this 19 day of April, A. D. 1858.

[SEAL.]

ROB'T M. LUSHER,
U. S. Com'r in and for the East'n District of La.

Depositions of David Dryden and Henry Barnaby.

ALEXANDER NORTON
vs.
The Steamboat H. R. W. HILL et al.

District Court of the United States, holding sessions at New Orleans, in and for the Eastern District of Louisiana.

Interrogatories to be propounded to Henry Barnaby, Samuel Cash, Angel Gill, David Driden, Charles Friend, and Moody Dustin, witnesses to be produced, sworn, and examined at Jeffersonville, Clark County, Indiana, on the part of the libellants in the above entitled cause:—

1st interrogatory. What is your name, age, occupation? Where do you reside?

2d interrogatory. Were you ever acquainted with a person named Henry Evans? If yea, state how long have you known him, where has the said Evans resided, what was his business.

3d interrogatory. Have you had any opportunity of knowing the character for truth and honesty of the said Evans in the community in which he has resided? If yea, state what that character is—is it good or bad?

4th interrogatory. Has or not the said Evans enjoyed the confidence of those among whom he has lived or by whom he has been employed as an honest, trustworthy man?

5th interrogatory. What has been the pursuit or occupation of Evans since you have known him? Is his pursuit one requiring integrity of conduct and fidelity to his employers? Has he or not to your knowledge given satisfaction to those who have employed him?

6th interrogatory. From your knowledge of his character for truth and veracity, would you or not believe him under oath?

Claimants and respondents, reserving the benefit of all just exceptions not waived, propound the following cross-interrogatories:—

1st cross-interrogatory. How long have you resided where you now live? How long have you followed your present occupation?

2d cross-interrogatory. How far do you live from Aurora? How long did Henry Evans live at or near Aurora? How often have you been with Henry Evans since 1852? How long at one time were you with him?

3d cross-interrogatory. Do you not know and is it not true that Henry Evans bore the character, whilst he was in Aurora, of a wild, intemperate, reckless, and grossly immoral man; and, since 1853, that he bore the character of a dishonest bad man?

4th cross-interrogatory. What do you know about his practices while he lived at Aurora? What do you know of his conduct while at Aurora and since?

5th cross-interrogatory. Do you know of any difficulty between

Henry Evans and any body about some of the cargo of the Western World which he picked up after the wreck of that boat in Dec'r, 1852? State what you may know or have heard on this subject.

6th cross-interrogatory. Who owned the boats that Henry Evans steered in December, 1852? Where did they start from to New Orleans? What are the names of his crew? Where are they or any of them to be found?

7th cross-interrogatory. Has anybody talked to you about the testimony you are to give in this case? If so, who and when? Do you know Alexander Norton? If so, when and where did you see him last?

8th cross-interrogatory. If you were told upon reliable authority that Henry Evans, descending the river, picked up a portion of the cargo of the Western World after she had been lost, that he brought the cargo to New Orleans and sold it without turning over the proceeds to the owners, consignees, or underwriters, would such information change your opinion of Henry Evans as a reliable and truthful man? What effect would such information have on your opinion or estimate of Evans as a man of honesty and veracity?

9th cross-interrogatory. How often were you at Aurora while Henry Evans lived there? How long did you stay at Aurora at any one time while Evans was there?

10th cross-interrogatory. On how many occasions have you been present when Henry Evans's character for truth and veracity was the subject of conversation among his acquaintances and neighbors? Did you ever hear Henry Evans's neighbors express an opinion of his character? If so, where and on what occasion?

11th cross-interrogatory. What was Henry Evans's social position at Aurora? How do you know in what estimation he was held there?

The said David Dryden being duly sworn to testify the truth, the whole truth, and nothing but the truth, relating to the said cause, his answers to the several questions are as follows:—

1st interrogatory he answers. Age, 45 years. David Dryden. Falls pilot. Live in Jeffersonville, Indiana.

2d interrogatory he answers. I only know him by reputation. He is a pilot, and did reside at Aurora. Have known or heard of him for five or six years.

3d interrogatory he answers. Have not had any opportunity of knowing.

4th interrogatory he answers. I do not know, have not had any opportunity of knowing, as to his honesty.

5th interrogatory he answers. His business has been that of a pilot, yet his pursuit is such as requires integrity of conduct and fidelity to his employers. I do not know that he has or has not given satisfaction to his employers.

6th interrogatory he answers. I do not know, am not sufficiently acquainted with him to form an opinion.

1st cross-interrogatory he answers. I have resided in Jeffersonville fifteen years, and have followed the river about thirty years, and have been falls pilot six years.

2d cross-interrogatory he answers. I live 120 miles from Aurora. Don't know how long Evans lived at Aurora. I went up the river on the same boat with him once, and was with him about one day on that same boat.

3d, 4th, 5th, and 6th cross-interrogatories he answers. He knows nothing about the matters contained in said interrogatories.

7th cross-interrogatory he answers. No person has talked to me about this case until now, this present time; I know Capt. Norton, he is now present; have not seen him, until now, for six or seven years.

8th cross-interrogatory he answers. Had never formed any opinion of Evans' honesty or veracity in any way; such information would not have any effect on my opinion of him.

9th cross-interrogatory he answers. Don't know whether was ever there while he was there—might have been there frequently.

10th cross-interrogatory he answers. Never did hear his character discussed at any time.

11th cross-interrogatory he answers. Does not know anything about it.

DAVID DRYDEN.

Subscribed and sworn to April 25th, 1857.

The said Henry Barnaby, being duly sworn to testify the truth, the whole truth and nothing but the truth, relating to the said cause, his answers to the several questions are as follows:—

1st interrogatory he answers. Henry S. Barnaby; 35 years old; falls pilot; reside in Jeffersonville, Indiana.

2d interrogatory he answers. Yes, I have known him about twelve years; was informed that he lived in Aurora, and know him to be a flat-boat pilot from this place, Cincinnati, and Aurora, to New Orleans.

3d interrogatory he answers. I have no other opportunity, except what I have heard from his neighbors, as to his character at home; I have seen a good deal of him here; his character has always been good; I never heard anything to the contrary.

4th interrogatory he answers. So far as I know cannot say how he stood in Aurora; have seen persons who had employed him who appeared to have every confidence in him; those persons employing him were from Aurora; all other persons I have seen from Aurora that spoke of him, spoke well of him.

5th interrogatory he answers. Flat-boat pilot from Cincinnati and Aurora to New Orleans—his pursuits require a man of integrity of conduct and fidelity to his employers—so far as I know he has given

satisfaction to his employers; several of them have said that he was a good pilot and a good man to run boats.

6th interrogatory he answers. I would have been willing to take his statement under oath at any time from my first acquaintance with him up to last spring, when I took him over to the falls, which was the last time I saw him.

1st cross-interrogatory he answers. Lived here sixteen or seventen years; have been a falls pilot eleven years at the falls of the Ohio.

2d cross-interrogatory he answers. About 120 miles; Henry Evans lived at or about Aurora ever since I knew—that is, twelve years.

I suppose I have been with him five or six times, probably more, since 1852; not more than an hour or two, may be longer or shorter.

3d cross-interrogatory he answers. Does not know; never heard anything of the kind.

4th cross-interrogatory he answers. Know nothing for or against his practices or conduct whilst in Aurora; when I have seen him here his conduct was good.

5th cross-interrogatory he answers. Have heard that he had some difficulty, but know nothing of the particulars; never heard any of them.

6th cross-interrogatory he answers. Don't know anything about that particular month, or whether he run a boat in that month at all, consequently could not know the owner or the crew, if any.

7th cross-interrogatory he answers. No person has said anything to me about it; was introduced to Captain Norton yesterday for the first time.

8th cross-interrogatory he answers. If Henry Evans knew the owners, consignees, or underwriters, and after deducting what he was entitled to, and he did not pay over the balance, it might change my opinion of him; such information, if reliable, and the said Evans knew the parties to whom the goods belonged, and did not make returns after deducting what he was entitled to, it might make me suspicious of him.

9th cross-interrogatory he answers. Never was in Aurora but once, and then but a short time; did not see Evans then.

10th cross-interrogatory he answers. Never heard his character brought in question as to truth and veracity, and never heard his character for truth and veracity discussed among his acquaintances and neighbors; I have heard his neighbors speak well of him.

11th cross-interrogatory he answers. Do not know anything about his social position; do not know anything about it except what I heard men from there say.

H. S. BARNABY.

Subscribed and sworn to April 25th, 1857.

The said Samuel Cash being duly sworn to testify the truth, the

whole truth, and nothing but the truth, relating to the said cause, his answers to the several questions are as follows:—

The hour of 4 o'clock P. M. having arrived before going on to the examination of Saml. Cash, counsel for libellants and claimants agreed to adjourn to meet on Monday, April 27th, 1857.

Monday 27th. Counsel for libellant appeared and asked for continuance, which not being opposed by opposite counsel, is granted.

Tuesday 28th. Counsel for libellant asked for further continuance; not objected to by counsel for claimant is granted.

Wednesday 29th. Counsel for libellant appeared and asked for continuance, which not being opposed is granted.

Thursday, 30 April. Counsel for libellant appeared and asked for continuance, which not being opposed is granted.

Friday, 1 May. Counsel for libellant appeared and asked for continuance, which not being opposed is granted.

Saturday, 2d May. Counsel for libellant appeared and asked for continuance, which not being opposed, is granted.

Monday, 4 May. Counsel for libellant appeared and asked for continuance, which not being opposed, is granted.

Tuesday, 5 May. Counsel for libellant appeared and said they had no further deponents to examine, and that the depositions might be closed. JOHN D. SHRYER, Notary Public.

State of Indiana, County of Clark, ss.

I, John D. Shryer, a notary public within and for said county, hereby certify, that David Dryden, Henry S. Barnaby, and Samuel Cash, were by me first duly sworn, according to law, to testify the truth, the whole, and nothing but the truth, relating to said cause, that the deposition of David Dryden and Henry S. Barnaby was reduced to writing by me. That the said libellant, by Jonas G. Howard, his attorney, and the claimants was present by J. G. Read, attorney, and said depositions were taken at Jeffersonville, county of Clark, and State of Indiana, commencing on the 25th of April, 1857, between the hours of 8 o'clock A. M. and 4 o'clock P. M., and continued from day to day until the 5th of May, 1857.

In testimony whereof I have hereunto set my hand and affixed my notarial seal, at my office in the city of Jeffersonville, the 5th day of May, A. D. 1857.

[SEAL.] JOHN D. SHRYER.

Depositions of—1. David Nevitt; 2. Joshua Sanks; 3. James Walser; 4. Wm. Cheek; 5. Francis Worley; 6. E. Small; 7. W. H. Small; 8. Perry Small; 9. D. Buffington; 10. Peter Williams; 11. Jno. Smith; 12. S. H. Webber; 13. A. W. Lewis; 14. M. B. Smith; 15. Jno. Cure; 16. A. J. Gray; 17. J. H. Thompson; 18. F. Ketter; 19. A. Farrall; 20. J. B. Durbin. Opened by consent 20th May, 1857.

Commission.

District Court of the United States, holding sessions at New Orleans, in and for the Eastern District of Louisiana.

To any U. S. Commissioner or other person authorized to administer oaths, in Dearborn County, State of Indiana, know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you John and Percy Cobb and others, named in accompanying interrogatories, and them duly examine on oath, touching and concerning certain matters and things, in a case now depending in the said court, wherein Alexander Norton, owner of steamer Western World, is libellant, and the owners of the steamer H. R. W. Hill claimants; and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness, the Hon. Theo. H. McCaleb, Judge of the District Court of the United States, at the city of New Orleans, [SEAL.] this third day of April, Anno Domini 1857, and the 81st year of the independence of the United States of America.

N. R. JENNINGS, Clerk.

By ROBT. M. LUSHER, Dy. Clk.

Interrogatories.

ALEXANDER NORTON
vs.
The St'mboat H. R. W. HILL et al.

Interrogatories to be propounded to John and Perry Cobb, Joseph Kitchell, James Walser, Isaac Spratsman, David Nevitt, Col. Farris, Joshua Sanker, Harrison Small, Perry Small, Ezra Small, Frank Worley, William Deltis, Shawder Cheek, and others, witnesses to be produced, sworn and examined, in Dearborn County, State of Indiana, on the part of the libellants in the above entitled cause.

1st interrogatory. What is your name, age, occupation? Where do you reside?

2d interrogatory. Were you ever acquainted with a person named Henry Evans? If yea, state how long you have known him? Where has the said Evans resided? What was his business?

3d interrogatory. Have you had any opportunity of knowing the character for truth and honesty of the said Evans in the community in which he has resided? If yea, state what that character is? Is it good or bad?

4th interrogatory. Has, or not, the said Evans enjoyed the confidence of those among whom he has lived, or by whom he has been employed, as an honest, trustworthy man?

5th interrogatory. What has been the pursuit or occupation of Evans since you have known him? If his pursuit is one requiring integrity of conduct and fidelity to his employer? Has he, or not, given satisfaction to those who have employed him?

6th interrogatory. From your knowledge of his character for truth and veracity, would you or not believe him under oath?

7th interrogatory. Do you know where the said Evans now is? If yea, state where. Is he alive or dead? If the latter, when did he die?

P. E. BONFORD,
Proctor for libellant.

We consent that the testimony of the above witnesses be taken by an U. S. Commissioner, or any person authorized to administer oaths, waiving proof of such authority.

R. H. MARR.

The commissioner who executes this commission, will please notify John D. Haynes, Esq., so that he may be present at the examination. Mr. Haynes is an attorney, residing at Aurora. He will not have the right to cross-examine the witnesses, but he is requested to be present as the representative of the claimants and respondent.

R. H. MARR,
Proctor for claimants.

Reserving the benefit of all just and legal exceptions not waived, claimants and respondent propound the following cross-interrogatories to the several witnesses:—

First. How long have you lived at your present place of residence? How long have you followed your present occupation? How far is your residence from the town of Aurora? How often have you seen Henry Evans within the last five years?

Second. Do you not know, and is it not true, that Henry Evans had the character, at Aurora, of being a wild, reckless young man, intemperate, unreliable, immoral, unsteady in his habits, and of low social position?

Third. When did Henry Evans leave Aurora. Since he left Aurora, did he not bear the character of a dishonest, bad man?

Fourth. Whose boats did Henry Evans steer to New Orleans in December, 1852? where did he start from? what were the names of his crew? what was his cargo? to whom were the boats consigned at New Orleans?

Fifth. Do you know anything of a difficulty Henry Evans had with his crew, or with any other person, about some of the cargo he picked up from the wreck of the Western World? If so, state all you may know about the matter.

Sixth. If you were told upon reliable authority that Henry Evans, while descending the river, came up with portions of the

cargo of a wrecked steamboat, that he brought it to its port of destination, sold it, and did not turn over the proceeds to the underwriters or owners, would such information change your opinion of Henry Evans as an honest, reliable, and truthful man?

Seventh. What do you know of Henry Evans's practices, associations, conduct, and behavior while he lived at Aurora, and since? State what you know on this subject fully.

Eighth. Are you related or connected in any way with Henry Evans? If so, how?

Ninth. Have you conversed with anybody touching the testimony you are to give in this case? If so, with whom, and when? Have you seen Alexander Norton lately? If so, when and where? Have you talked with him about this man Evans?

Tenth. Do you know John D. Haynes, John Turner, Israel Phalin, George R. Stratton, James W. Weaver, Isaac N. Cochrane, and James Greer, of your county? Are they truthful men?

R. H. MARR,
Proctor for Claimants.

Depositions of witnesses produced, sworn, and examined by virtue of the annexed commission, commencing at 10 o'clock on Thursday, the 30th day of April, eighteen hundred and fifty-seven, at the city of Aurora, in the county of Dearborn, and State of Indiana, before me, William T. Harris, a justice of the peace within and for the county of Dearborn, State of Indiana, in a certain cause now depending in the District Court of the United States, holding sessions at New Orleans, in and for the Eastern District of Louisiana, wherein Alexander Norton, owner of the steamboat Western World, is libellant, and the owners of the steamboat H. R. W. Hill are claimants, on the part of the said libellant.

David Nevitt, being produced and sworn, answers as follows to the interrogatories and cross-interrogatories propounded in this cause—

Question 1st. What is your name, age, occupation? Where do you reside?

Answer. David Nevitt; fifty-eight (58); farmer by occupation; reside in Dearborn County, Indiana.

Interrogatory 2d. Were you ever acquainted with a person named Henry Evans? If so, state how long you have known him. Where did the said Evans reside? What was his business?

Answer. I was acquainted with a young man by that name. I have known him for twenty years. Henry Evans was raised and resided in my neighborhood for about twenty years. The greater portion of the twenty years that I knew him, he was engaged in farming, the latter part of that period of twenty years he was engaged on the Ohio and Mississippi Rivers as a flat-boat pilot.

Interrogatory 3d. Have you had any opportunity of knowing the character for truth and honesty of the said Evans in the community

in which he has resided? If yea, state what that character is. Is it good or bad?

Answer. I have had a good opportunity of knowing his character for truth and honesty. His character was and is good.

Interrogatory 4th. Has or not the said Evans enjoyed the confidence of those among whom he has lived or by whom he has been employed, as an honest, trustworthy man?

Answer. He enjoyed the confidence of those among whom he lived, and of those by whom he was employed, as an honest, trustworthy man.

Interrogatory 5th. What has been the pursuit or occupation of Evans since you have known him? Was his pursuit one requiring integrity of conduct and fidelity to his employers? Has he or not given satisfaction to those who have employed him?

Answer. The greater portion of the time I knew him, he was engaged in farming, and the latter part of the said twenty years as a flat-boat pilot on the Ohio and Mississippi Rivers. His pursuits as farmer and flat-boat pilot required integrity of conduct and fidelity to his employers. I have employed him as a farmer. I have also employed him as a flat-boat hand, and as a second pilot on flat-boats run by me to the city of New Orleans, and as a farmer, flat-boat hand, and second pilot. He gave me entire satisfaction, and, so far as my knowledge extends, he has given entire satisfaction to those in whose employ he has been as farmer or otherwise.

Interrogatory 6th. From your knowledge of his character for truth and veracity, would you or not believe him under oath?

Answer. I would not hesitate to believe him under oath, and was well acquainted with his character for truth and veracity up to the time that I heard of his death, which I believe was some time in the summer of 1856.

Interrogatory 7th. Do you know where the said Evans now is? If yea, state where. Is he alive or dead? If the latter, where did he die?

Answer. I understand that the said Henry Evans died some time in the summer of 1856; but where, I do not know.

Cross-examination.

First. How long have you lived at your present place of residence? How long have you followed your present occupation? How far is your residence from the town of Aurora? How often have you seen Henry Evans within the last five years?

Answer. I have lived at my present place of residence twenty-one or twenty-two years. I have followed my present occupation about 25 years. My residence is between two and three miles from the town of Aurora. I have seen Henry Evans frequently during the last five years, but cannot state the number of times.

Second. Do you not know, and is it not true, that Henry Evans had the character at Aurora of being a wild, reckless young man,

intemperate, unreliable, immoral, unsteady in his habits, and of low social position?

Answer. Henry Evans did not bear the character at Aurora referred to in the question immediately preceding this answer, but on the contrary, so far as my knowledge extends (and I think I have good reason to know), his character in Aurora was good.

Third. When did Henry Evans leave Aurora? Since he left Aurora did he not bear the character of a dishonest bad man?

Answer. I cannot tell when Henry Evans left Aurora. Since he left Aurora I do not think he bore the character of a dishonest bad man.

Fourth. Whose boats did Henry Evans steer to New Orleans in Decbr. 1852? Where did he start from? What were the names of his crew? What was his cargo? To whom were the boats consigned at New Orleans?

Answer. I do not know whose boats Henry Evans steered to New Orleans in December, 1852. Do not know where he started from. Do not know the names of his crew. Do not know what was his cargo; and do not know to whom the boats were consigned.

Fifth. Do you know anything of a difficulty Henry Evans had with his crew, or with any other person, about some of the cargo he picked up from the wreck of the Western World? If so, state all you may know about the matter.

Answer. I know nothing about anything of a difficulty Henry Evans had with his crew, or with any other person, about any of the cargo picked up from the wreck of the Western World by him or by any other person.

Sixth. If you were told upon reliable authority that Henry Evans while descending the river came up with portions of the cargo of a wrecked steamboat, that he brought it to its port of destination, sold it, and did not turn over the proceeds to the underwriters or owners, would such information change your opinion of Henry Evans as an honest, reliable, and truthful man?

Answer. In answer to the sixth interrogatory I can only say this, if Henry Evans, while descending the river, picked up freight from a wrecked steamboat, and that freight was so marked as to show who the owner or owners were, or who were the underwriters, or if he knew of his own knowledge to whom the freight belonged, and he sold it and kept the proceeds, and this information was given me by reliable authority, my opinion as to his honesty, reliability, and trustworthiness, would be shaken; but if the freight was not so marked as would show who were the owners or underwriters, and he did not of his own knowledge know to whom the freight so picked up belonged, then my opinion would not be changed or shaken as to his honesty, reliability, or trustworthiness.

Seventh. What do you know of Henry Evans's practices, associations, conduct, and behavior while he lived at Aurora and since? State what you know on this subject fully.

Answer. I have never heard aught against his character while he lived at Aurora or since, and had no knowledge that his practices or associations were improper; his behavior and conduct while he lived at Aurora, and since, so far as my knowledge extended, were good.

Eighth. Are you related or connected in any way with Henry Evans? If so, how?

Answer. No relation whatever.

Ninth. Have you conversed with any body touching the testimony you are to give in this case? If so, with whom, and when? Have you seen Alexander Norton lately? If so, when and where? Have you talked to him about this man Evans?

Answer. I have talked with no one about the testimony I have given or have to give in this case; I have seen Alexander Norton; first met him during my examination as a witness in this case, in the town of Aurora, Indiana; I have never talked with Norton in relation to the case, or any other business; have never talked to him about Evans or any other witness.

Tenth. Do you know John D. Haynes, John Turner, Israel Phalin, George B. Stratton, James W. Weaver, Isaac N. Cochran, and James Greir, of your county? Are they truthful men?

Answer. I am acquainted with John D. Haynes, James W. Weaver, and Isaac N. Cochran, they are truthful men; I am not acquainted with John Turner, Israel Phalin, George B. Stratton, or James Greir.

DANIEL NEVITT.

Sworn to and subscribed on the day and at the place first aforesaid.

WILLIAM T. HARRIS,
Justice of the Peace.

Joshua Sanks, of lawful age, being duly cautioned and sworn, deposes in answer to interrogatories, as follows:—

Interrogatory First. What is your name, age, occupation? Where do you reside?

Answer. My name is Joshua Sanks; I am seventy-nine years of age; my occupation is that of a farmer; I reside in Dearborn County, Indiana.

Interrogatory 2d. Were you ever acquainted with a person named Henry Evans? If yea, state how long you have known him. Where did the said Evans reside? What was his business?

Answer. I was acquainted with Henry Evans; I have known him ever since he was a small boy; more intimately acquainted with him within the last eight or ten years; Evans generally resided in this county (Dearborn); his business was that of a flat-boat pilot.

Interrogatory 3d. Have you had any opportunity of knowing the character for truth and honesty of the said Evans, in the community in which he has resided? If yea, state what that character is. Is it good or bad?

Answer. I have had opportunity of knowing the character for truth and honesty of the said Evans, in the community in which he

resided; and as long as he lived, he sustained a good character for truth and honesty.

Interrogatory 4th. Has, or not, the said Evans enjoyed the confidence of those among whom he has lived, or by whom he has been employed, as an honest trustworthy man?

Answer. He has, as far as my knowledge extended, and I had good opportunity of knowing that he enjoyed the confidence of those by whom he was employed.

Interrogatory 5th. What has been the pursuit or occupation of Evans since you have known him? Is his pursuit one requiring integrity of conduct and fidelity to his employers? Has he or not given satisfaction to those who have employed him?

Answer. He has generally been engaged in the business of piloting flat-boats on the Ohio and Mississippi Rivers, since my acquaintance with him, for the last eight or ten years; his pursuit was one that required integrity of conduct and fidelity to those who employed him. As far as my knowledge extends, his conduct has given general satisfaction to those who employed him, and I think I know the estimation in which he was held by his employers.

Interrogatory 6th. From your knowledge of his character for truth and veracity, would you or not believe him under oath?

Answer. Indeed I would believe him under oath; I would not hesitate a moment to believe him under oath, from my knowledge of his character for truth and veracity and his character generally.

Interrogatory 7th. Do you know where the said Evans now is? If yea, state where. Is he alive or dead? If the latter, where did he die?

Answer. I understand that Henry Evans is dead; that he died some time in the summer or fall of 1856; I understand he died near Shawneetown, in the State of Illinois.

Cross-examination.

First. How long have you lived at your present place of residence? How long have you followed your present occupation? How far is your residence from the town of Aurora? How often have you seen Henry Evans within the last five years?

Answer. I have lived at my present place of residence for twenty years; I have lived in the immediate neighborhood for forty years; I live between two and three miles from the town of Aurora; I have followed the occupation of a farmer thirty odd years; I have seen Henry Evans often during the last five years.

Second. Do you not know, and is it not true, that Henry Evans had the character at Aurora of being a wild, reckless young man, intemperate, unreliable, immoral, unsteady in his habits, and of low social position?

Answer. I do not know, and I do not believe, that Henry Evans had the character at Aurora of being a wild, reckless young man, intemperate, unreliable, immoral, unsteady in his habits, or of low

social position; and I am satisfied that if he had sustained such a character in the town of Aurora, at or before the time of his death, I should have known it.

Third. When did Henry Evans leave Aurora? Since he left Aurora did he not bear the character of a dishonest, bad man?

Answer. He was at my house (I think) in the month of February, 1856, and shortly after, I think he left Aurora; no, he did not bear the character of a dishonest, bad man, either before or since he left Aurora.

Fourth. Whose boats did Henry Evans steer to New Orleans in December, 1852? Where did he start from? What were the names of his crew? What was his cargo? To whom were the boats consigned at New Orleans?

Answer. I do not know whose boats Henry Evans steered to New Orleans in December, 1852. I do not know where he started from. I do not know the names of his crew. I do not know what was his cargo; and I do not know to whom the boats were consigned to in New Orleans.

Fifth. Do you know anything of a difficulty Henry Evans had with his crew or with any other person about some of the cargo he picked up from the wreck of the Western World? If so, state all you may know about the matter.

Answer. I do not know anything about any difficulty Henry Evans had with his crew, or with any other person, about some of the cargo picked up from the wreck of the Western World.

Sixth. If you were told upon reliable authority that Henry Evans, while descending the river, came up with portions of the cargo of a wrecked steamboat, that he brought it to its port of destination, sold it, and did not turn over the proceeds to the underwriters or owners, would such information change your opinion of Henry Evans as an honest, reliable and truthful man?

Answer. Such information as is referred to in the 6th interrogatory would not change my opinion of Henry Evans as an honest, reliable, and trustworthy man.

Seventh. What do you know of Henry Evans' practices, associations, conduct, and behavior, while he lived at Aurora, and since? State what you know on this subject fully.

Answer. I never heard anything against Henry Evans in his practices, associations, conduct, and behavior, while he lived at Aurora, or since. If his practices, associations, conduct, and behavior had been other than good, I am confident I should have heard of it.

Eighth. Are you related or connected in any way with Henry Evans? If so, how?

Answer. I am not related to Henry Evans in any way, nor connected.

Ninth. Have you conversed with anybody touching the testimony you are to give in this case? If so, with whom and when? Have

you seen Alexander Norton lately? If so, when and where? Have you talked with him about this man Evans?

Answer. I have not conversed with any one touching my testimony to be given in this case. Have never seen Alexander Norton before this day, and did not know him until introduced; have had no conversation with him whatever in regard to Henry Evans or the case.

Tenth. Do you know John D. Haynes, John Turner, Israel Phalin, George B. Stratton, James W. Weaver, Isaac N. Cochran, and James Greir, of your county? Are they truthful men?

Answer. I know John D. Haynes, James W. Weaver, and Isaac N. Cochran; they are truthful men. I do not know John Turner, Israel Phalin, George B. Stratton, and James Greir.

JOSHUA SANKS.

Sworn to and subscribed on the day and in the place first aforesaid.

WILLIAM T. HARRIS,
Justice of Peace.

James Walser, of lawful age, being duly cautioned and sworn, deposes in answer to interrogatories as follows, to wit:—

Interrogatory 1st. What is your name, age, occupation? Where do you reside?

Answer. My name is James Walser; I am fifty years of age; I am a farmer; I reside in Dearborn County, Indiana.

Interrogatory 2d. Were you ever acquainted with a person named Henry Evans? If yea, state how long you have known him. Where did the said Evans reside? What was his business?

Answer. I was acquainted with Henry Evans; I think I have known him about fifteen years; when I first knew him he lived with David Nevitt. For the last ten or twelve years I have known him more intimately at Aurora and on the river. I first knew him as a flatboat hand, and then as a flatboat pilot; he piloted a flatboat for me.

Interrogatory 3d. Have you had any opportunity of knowing the character for truth and honesty of the said Evans in the community in which he resided? If yea, state what that character is. Is it good or bad?

Answer. I have had opportunity of knowing the character of the said Evans for truth and honesty in the community in which he resided. His character for truth and honesty was good.

Interrogatory 4th. Has or not the said Evans enjoyed the confidence of those among whom he has lived, or by whom he has been employed, as an honest trustworthy man?

Answer. The said Henry Evans enjoyed the confidence of those among whom he has lived, and of those by whom he was employed, as an honest, trustworthy man, and enjoyed that confidence to the time of his decease.

Interrogatory 5th. What has been the pursuit or occupation of Evans since you have known him? Is his pursuit one requiring in-

tegrity of conduct and fidelity to his employers? Has he or not given satisfaction to those who have employed him?

Answer. When I first became acquainted with him he was a farmer; for the last ten or twelve years before his death, he was a flat-boat pilot; his pursuit was one requiring integrity of conduct and fidelity to his employers; he has always given satisfaction to those who have employed him.

Interrogatory 6th. From your knowledge of his character for truth and veracity, would you or not believe him under oath?

Answer. I would certainly believe him under oath.

Interrogatory 7th. Do you know where the said Evans now is? If yea, state where. Is he alive or dead? If the latter, when did he die?

Answer. I understand that he died some time in the year 1856.

Cross-examination.

First. How long have you lived at your present place of residence? How long have you followed your present occupation? How far is your residence from the town of Aurora? How often have you seen Henry Evans within the last five years?

Answer. I have lived in Dearborn County about 45 years; have followed farming about thirty-five years; my residence is nine miles from the town of Aurora; I have seen ten or twelve times Henry Evans within the last five years, more or less, every year.

Second. Do you not know, and is it not true, that Henry Evans had the character, at Aurora, of being a wild, reckless young man—intemperate, unreliable, immoral, unsteady in his habits, and of low social position?

Answer. I never knew that Henry Evans had the character of being a wild, reckless young man, intemperate, unreliable, immoral, unsteady in his habits, or of low social position at Aurora, or at any other place. And if he had sustained such a character at Aurora, or in any other place, I should most certainly have known it, as I have been in the habit for years of visiting Aurora very frequently and have been and am now intimately acquainted with the citizens of Aurora.

Third. When did Henry Evans leave Aurora? Since he left Aurora, did he not bear the character of a dishonest, bad man?

Answer. Henry Evans was at Aurora in the spring of 1856; I never heard that he had the character of a dishonest, bad man, either before or since he left Aurora.

Fourth. Whose boats did Henry Evans steer to New Orleans in December, 1852? Where did he start from? What were the names of his crew? What was his cargo? To whom were the boats consigned to at New Orleans?

Answer. I do not know whose boats Evans steered to New Orleans in December, 1852; or who were his crew, or what was his cargo, nor to whom the boats were consigned.

Fifth. Do you know anything of a difficulty Henry Evans had with his crew, or with any other person about some of the cargo he picked up from the wreck of the Western World? If so, state all you may know about the matter.

Answer. I do not.

Sixth. If you were told, upon reliable authority, that Henry Evans, while descending the river, came up with portions of the cargo of a wrecked steamboat, that he brought it to its port of destination, sold it, and did not turn over the proceeds to the underwriters or owners, would such information change your opinion of Henry Evans as an honest, reliable, and truthful man?

Answer. Such information, as contained in the sixth cross-interrogatory, would not change my opinion in the character of Henry Evans as an honest, reliable, and truthful man.

Seventh. What do you know of Henry Evans's practices, associations, conduct, and behavior while he lived at Aurora and since? State what you know on this subject fully.

Answer. His character was good so far as my knowledge extended, and my opportunity of so knowing was good.

Eighth. The further taking of James Walser's testimony is here deferred to Saturday, 2d day of May, 1857, at 10 o'clock A. M., and the taking of depositions generally, in the case, is continued until to-morrow morning at 10 o'clock.

WILLIAM T. HARRIS,
Justice of the Peace.

Saturday, at ten o'clock A. M., May 2d, 1857, the examination of James Walser was resumed.

Cross-examination.

Eighth. Are you related or connected in any way with Henry Evans? If so, how?

Answer. I am not.

Ninth. Have you conversed with anybody touching the testimony you are to give in this case? If so, with whom and when? Have you seen Alexander Norton lately? If so, when and where? Have you talked with him about this man Evans?

Answer. I have not conversed with anybody touching my testimony in the case. I have never seen Alexander Norton until the first day of my examination, and have had no communication whatever with him in the matter.

Tenth. Do you know John D. Haynes, John Turner, Israel Phalin, George B. Stratton, James W. Weaver, Isaac N. Cochran, and James Greir, of your county? Are they truthful men?

Answer. I know them all, and I believe them to be truthful men.

JAMES WALSER.

Sworn to and subscribed on the day last above mentioned, and at the place first aforesaid.

WILLIAM T. HARRIS.
Justice of the Peace.

Examinations resumed at place first aforesaid on Friday, first day of May, at 10 o'clock A. M., 1857.

William M. Cheek, of lawful age, being duly examined, cautioned, and sworn, deposes, in answer to interrogatories, as follows :—

Interrogatory 1st. What is your name, age, and occupation? Where do you reside?

Answer. My name is William M. Cheek. I am about forty-eight years of age. My principal occupation is that of a flat-boat pilot on the Ohio and Mississippi Rivers. I live in the city of Aurora, State of Indiana.

Interrogatory 2d. Were you ever acquainted with a person named Henry Evans? If so, state how long you have known him. Where did the said Evans reside? What was his business?

Answer. I was acquainted with Henry Evans up to the time of his death. Have known him about fifteen years previous to his death. Henry Evans resided in Dearborn County, Indiana. His business was following the river; a portion of the time as a flat-boat hand, and for about eight years last previous as a flat-boat pilot.

Interrogatory 3d. Have you had any opportunity of knowing the character for truth and honesty of the said Evans in the community in which he resided? If yea, state what that character is. Is it good or bad?

Answer. I have had opportunity of knowing the character of Henry Evans for truth and honesty in the community where he resided, and that character was good as far as I had knowledge of.

Interrogatory 4th. Has or not the said Evans enjoyed the confidence of those among whom he has lived, or by whom he has been employed as an honest, trustworthy man?

Answer. Henry Evans has enjoyed the confidence of those among whom he lived, and among those by whom he was employed, as an honest and trustworthy man, as far as my knowledge extends.

Interrogatory 5th. What has been the pursuit or occupation of Evans since you have known him? Was his pursuit one requiring integrity of conduct and fidelity to his employers? Has he or not given satisfaction to those who have employed him?

Answer. Henry Evans was first known by me as a farmer, and afterwards as a flat-boat hand and flat-boat pilot. His pursuit was one requiring integrity of conduct and fidelity to those who employed him. Henry Evans has given satisfaction to those who employed him as I know or have any information of.

Interrogatory 6th. From your knowledge of his character for truth and veracity would you or not believe him under oath?

Answer. From my knowledge of Henry Evans I should have believed him under oath, from his character for truth and veracity.

Interrogatory 7th. Do you know where the said Evans now is? If yea, state where. Is he alive or dead? If the latter, where did he die?

Answer. I have heard he was dead; I understood that he died near Shawnee Town, Illinois, some time in the summer of 1856.

Cross-examination.

First. How long have you lived at your present place of residence? How long have you followed your present occupation? How far is your residence from the town of Aurora? How often have you seen Henry Evans within the last five years?

Answer. I have lived at my present place of residence, in the city of Aurora, for about ten or twelve years last past; have followed my present occupation, boating, about five years; I have seen Henry Evans frequently during the last five years, more or less every year.

Second. Do you not know and is it not true, that Henry Evans had the character at Aurora of being a wild, reckless young man, intemperate, immoral, unreliable, unsteady in his habits, and of low social position?

Answer. I do not know that Henry Evans sustained the character contained in the second cross-interrogatory.

Third. When did Henry Evans leave Aurora? Since he left Aurora, did he not bear the character of a dishonest, bad man?

Answer. Henry Evans left Aurora as far as I can recollect between 1850 and 1854; he bore the character of a dishonest, bad man, only with some that I have heard speak of him, and that only in one case.

Fourth. Whose boat did Henry Evans steer to New Orleans in December, 1852? Where did he start from? What were the names of his crew? What was his cargo? To whom were the boats consigned at New Orleans?

Answer. I cannot tell; I do not know whose boats Henry Evans steered to New Orleans in December, 1852; neither do I know where he started from, or the names of his crew, or his cargo, or to whom the boats were consigned to at New Orleans.

Fifth. Do you know anything of a difficulty Henry Evans had with his crew, or with any other person, about some of the cargo he picked up from the wreck of the Western World? If so, state all you may know about the matter.

Answer. I do not know anything of the matters referred to in the preceding question.

Sixth. If you were told upon reliable authority that Henry Evans while descending the river, came up with portions of the cargo of a wrecked steamboat, that he brought it to its port of destination, sold it, and did not turn over the proceeds to the underwriters or owners, would such information change your opinion of Henry Evans as an honest, reliable, and truthful man?

Answer. I would not believe Henry Evans under oath, were such information communicated to me as contained in the sixth cross-interrogatory.

Seventh. What do you know of Henry Evans's practices, associations, conduct and behavior while he lived at Aurora, and since? State what you know on this subject fully.

Answer. While Henry Evans lived at Aurora I do not know of any bad practices he was guilty off; and I do not know of any since.

Eighth. Are you related or connected in any way with Henry Evans? If so, how?

Answer. I am not in any way connected with or related to Henry Evans.

Ninth. Have you conversed with anybody touching the testimony you are to give in this case? If so, with whom and when? Have you seen Alexander Norton lately? If so, when and where? Have you talked with him about this man Evans?

Answer. I have not conversed with anybody touching the testimony I am to give in this case. I have seen Alexander Norton this day. I have talked with Alexander Norton concerning the case.

Tenth. Do you know John D. Haynes, John Turner, Israel Phalin, George R. Stratton, James W. Weaver, Isaac N. Cochran, and James Greir, of your county? Are they truthful men?

Answer. I know all the men enumerated in the tenth cross-interrogatory, and they are all truthful men.

WILLIAM CHEEK.

Sworn to and subscribed on Friday, 1st day of May, 1857, and at the place first aforesaid.

WILLIAM T. HARRIS, J. Peace.

The taking of depositions generally in the case is continued until to-morrow morning at ten o'clock.

WILLIAM T. HARRIS, J. Peace.

Examination resumed on Saturday at ten o'clock A. M., May 2d, 1857.

Francis Worley, of lawful age, being duly cautioned and sworn, deposes to interrogatories as follows, to wit:—

Interrogatory 1st. What is your name, age, and occupation? Where do you reside?

My name is Francis Worley; my age is forty-six years; my occupation that of a farmer; I reside in Dearborn County, Indiana.

Interrogatory 2d. Were you ever acquainted with a person named Henry Evans? If so, state how long you have known him. Where did the said Evans reside? What was his business?

Answer. I was acquainted with Henry Evans; have known him from the time of being a small boy until his death. Henry Evans lived in Dearborn County, Indiana. He was raised as a farmer. For the last eight or ten years, he was a flat-boat hand and flat-boat pilot.

Interrogatory 3d. Have you had any opportunity of knowing the

character for truth and honesty of the said Evans in the community in which he resided? If yea, state what that character is—is it good or bad?

Answer. I have had opportunity of knowing, and he bore a good character.

Interrogatory 4th. Has or not the said Evans enjoyed the confidence of those among whom he has lived, or by whom he has been employed, as an honest, trustworthy man?

Answer. I think he has enjoyed the confidence of those among whom he lived and by whom he has been employed as an honest, trustworthy man.

Interrogatory 5th. What has been the pursuit or occupation of Evans since you have known him? Was his pursuit one requiring integrity of conduct and fidelity to his employers? Has he or not given satisfaction to those who have employed him?

Answer. Henry Evans was first a farmer, and for the last eight or ten years he followed the river as a flat-boat man and flat-boat pilot. His pursuit was one requiring integrity of conduct and fidelity to his employers. I believe he gave satisfaction to those who employed him; I never heard any complaint.

Interrogatory 6th. From your knowledge of his character for truth and veracity, would you or not believe him under oath?

Answer. I would believe him under oath without hesitation.

Interrogatory 7th. Do you know where the said Evans now is? If yea, state where. Is he alive or dead? If the latter, where did he die?

Answer. I do not know otherwise than that he is dead. I understood he died at or near Shawnee Town, Illinois, some time in the summer of 1856.

Cross-examination.

First. How long have you lived at your present place of residence? How long have you followed your present occupation? How far is your residence from the town of Aurora? How often have you seen Evans within the last five years?

Answer. I have lived at my present place of residence about forty years; have followed my occupation about thirty years; I live two miles from the town of Aurora; I have seen Henry Evans frequently during the last five years, more or less every year.

Second. Do you not know, and is it not true, that Henry Evans had the character at Aurora of being a wild, reckless young man, intemperate, unreliable, immoral, unsteady in his habits, and of low social position?

Answer. I do not know that Henry Evans bore such a character at Aurora or elsewhere, as is contained in the last interrogatory; if he had borne such a character I should have known it.

Third. When did Henry Evans leave Aurora? Since he left Aurora did he not bear the character of a dishonest, bad man?

Answer. The last time I saw Henry Evans in Dearborn County

was in the spring of 1856. I have no knowledge that he bore such a character either before or since he left Aurora.

Fourth. Whose boats did Henry Evans steer to New Orleans in December, 1852? Where did he start from? What were the names of his crew? What was his cargo? To whom were the boats consigned at New Orleans?

Answer. I know not whose boats Henry Evans steered to New Orleans in December, 1852; neither where he started from, nor the names of his crew, or what was his cargo, or to whom the boats were consigned.

Fifth. Do you know anything of a difficulty Henry Evans had with his crew, or with any other person, about some of the cargo he picked up from the wreck of the Western World? If so, state all you may know about the matter.

Answer. I know nothing about the matter.

Sixth. If you were told upon reliable authority that Henry Evans, while descending the river, came up with portions of the cargo of a wrecked steamboat, that he brought it to its port of destination, sold it, and did not turn over the proceeds to the underwriters or owners, would such information change your opinion of Henry Evans, as an honest, reliable, and truthful man?

Answer. I would not doubt Henry Evans' integrity nor disbelieve him under oath, under the circumstances stated in the sixth cross-interrogatory.

Seventh. What do you know of Henry Evans' practices, associations, conduct, and behavior, while he lived at Aurora, and since? State what you know on this subject fully.

Answer. I do not know anything against Henry Evans's character while he lived at Aurora or since.

Eighth. Are you related or connected in any way with Henry Evans? If so, how?

Answer. I am not.

Ninth. Have you conversed with anybody touching the testimony you are to give in this case? If so, with whom and when? Have you seen Alexander Norton lately? If so, when and where? Have you talked with him about this man Evans?

Answer. I have not conversed with any one touching the testimony I am to give in this case. I never have seen Alexander Norton until introduced to him during the examination. I have not talked with him about this man Evans.

Tenth. Do you know John D. Haynes, John Turner, Israel Phalin, George R. Stratton, James W. Weaver, Isaac N. Cochran, and James Greir, of your county? Are they truthful men?

Answer. I know all the men above enumerated, and believe them to be truthful men. FRANCIS WORLEY.

Sworn to and subscribed Saturday, 2d of May, 1857, and at place first aforesaid. WILLIAM T. HARRIS,
Justice of Peace.

Eleazer Small, of lawful age, being duly cautioned and sworn, answers and deposes to interrogatories as follows:—

In answer to interrogatory first, says. My name is Eleazer Small; my age is sixty-two; my occupation is farming; I reside in Dearborn County, Indiana.

In answer to interrogatory 2d, says. I have been acquainted with Henry Evans from the time he was born to his death. Evans has always resided in Dearborn County, was raised within half a mile of my residence. He was raised as a farmer; but, for the last eight or ten years, he was first a flat-boat hand, and afterwards a flat-boat pilot.

In answer to interrogatory 3d, says. I have had opportunity of knowing the character for truth and honesty of the said Evans in the community in which he resided. I never knew but that his character was as good as that of people in general.

In answer to interrogatory 4th, says. I have never heard anything to the contrary.

In answer to interrogatory 5th, says. The first part of his life was passed as a farmer; afterwards, he was first as a flat-boat hand, and then a flat-boat pilot. The first time he went down the river was with me as a flat-boat hand, about fifteen years ago. His pursuit required integrity of conduct and fidelity to his employers. From my knowledge, he has always done so; and I never heard anything to the contrary.

In answer to interrogatory 6th, says. I would believe him under oath.

In answer to interrogatory 7th, says. I have understood that Henry Evans is dead, that he died some time in 1856. I understand that he died near Shawnee Town, Illinois.

In answer to claimants' first interrogatory, says. I have lived in Dearborn County, Indiana, for forty years; have followed my present occupation for the same length of time. I reside three miles from the town of Aurora, and have lived that near to Aurora for the same length of time. I have seen Evans frequently for the last five years, more or less every year.

In answer to claimants' second interrogatory, says. I do not know it, and I do not believe it to be true, from anything I have known or heard.

In answer to claimants' third interrogatory, says. The last time I saw Henry Evans was in Dearborn County, Indiana, in the spring of 1856. To the best of my knowledge and information, he did not bear any such character.

In answer to claimants' fourth interrogatory, says. He knows nothing about the boats or their crew, or where he started from, or his cargo, or to whom they were consigned at New Orleans.

In answer to claimants' fifth interrogatory, says. I know nothing about it.

In answer to claimants' 6th interrogatory, says. I do not think it would.

In answer to claimants' 7th interrogatory, says. I never heard anything against him.

In answer to claimants' 8th interrogatory, says. I am not related or connected with Henry Evans in any way whatever.

In answer to claimants' 9th interrogatory, says. I have not conversed with any one touching my testimony in this case; have never seen Alexander Norton until this examination, and have not talked with him about this man Evans.

In answer to claimants' 10th interrogatory, says. I know all the men there enumerated, and believe them to be truthful men.

ELEAZER SMALL.

Sworn to and subscribed on Saturday, 2d May, 1857, and at the place first aforesaid. WILLIAM T. HARRIS.
Justice of the Peace.

Wm. H. Small, of lawful age, being duly cautioned and sworn, deposes and answers to interrogatories as follows:—

Answer to libellant's interrogatory 1st, says. My name is Wm. Harrison Small; I am thirty-seven years old; I follow farming and navigating the river; I reside in Dearborn County, Indiana.

In answer to libellant's interrogatory 2d, says. I was acquainted with Henry Evans; were raised boys together; knew Henry Evans from the sixth year of his age to his death; he resided in Dearborn County, Indiana; his business in boyhood was that of farming; have known him following the river first as a flat-boat hand, and then a flat-boat pilot for the last ten or twelve years.

In answer to libellant's interrogatory 3d, says. I have had large opportunity of knowing him and the character for truth and honesty he bore in the community in which he resided; have been with him on the river often, and know his character to be generally good; have been with him in Dearborn County, in Aurora, and know his character there to be good.

In answer to libellant's interrogatory 4th, says. Henry Evans has enjoyed the confidence of those among whom he resided, and by whom he has been employed, as an honest, trustworthy man; and I have had full opportunities of knowing.

In answer to libellant's interrogatory 5th, says. A large portion of the time he was a farmer, and the balance, about ten or twelve years, he was a flat-boat hand and flat-boat pilot. It was a pursuit that required integrity of conduct and fidelity to his employers. He has given satisfaction to his employers as far as my knowledge and information extended.

In answer to libellant's interrogatory 6th, says. I would believe Henry Evans under oath all the time.

In answer to libellant's interrogatory 7th, says. The best informa-

tion I have is he died in neighborhood of Shawnee Town, Illinois, some time in summer of 1856.

Cross-examination.

In answer to claimants' first interrogatory, says. I have lived in Dearborn County, Indiana, thirty-seven years; have, for the last twenty years, followed the business of flat-boating and farming; I reside three miles from Aurora; have seen Henry Evans frequently within the last five years; the last time I saw him was at New Orleans in the spring of 1856.

In answer to claimants' 2d interrogatory, says. I do not know (and I have good opportunity of knowing), and do not believe, that Henry Evans had any such character at Aurora.

In answer to claimants' 3d interrogatory, says. To the best of my knowledge he left Aurora some time in the spring of 1856; he did not bear the character of a dishonest, bad man to my knowledge.

In answer to claimants' 4th interrogatory, says. It is a negative throughout.

In answer to claimants' 5th interrogatory, says. He knows nothing about the matter.

In answer to claimants' 6th interrogatory, says. It would not change my opinion of Henry Evans, for I do not believe that he would do any such thing, if he knew or had any means of knowing by marks upon the property so picked up to whom it belonged or who were the underwriters.

In answer to claimants' 7th interrogatory, says. As far as I know his character was always good.

In answer to claimants' 8th interrogatory, says. I am not.

In answer to claimants' 9th interrogatory, says. I have never spoken to or conversed with any one on the subject, excepting some time last fall when John D. Haynes, Esq., attorney and counsellor at law, in Aurora, questioned me whether some evidence could not be obtained to impeach Henry Evans's character for truth and veracity, to which I answered, "If you expect to succeed in your case you had better quit right there;" he (John D. Haynes) intimated that could he (Haynes) succeed in thus impeaching Evans's veracity he (Haynes) would make money, and it would put about fifty thousand (50,000) dollars into his client's pocket. I have talked with no other person (excepting Haynes) on the matter, in any way whatever; I had never seen Alexander Norton until the moment of giving my testimony, and have had no conversation with him about Henry Evans or the case in any shape or manner.

In answer to claimants' 10th interrogatory, says. I know all the persons named therein and believe them to be truthful men.

WILLIAM H. SMALL.

Sworn to and subscribed on Saturday, 2d May, 1857, and at place first aforesaid.

WILLIAM T. HARRIS, Justice of the Peace.

Perry Small, of lawful age, being duly cautioned and sworn, deposes and answers to interrogatories as follows:—

In answer to libellant's interrogatory 1st, says. My name is Perry Small, my age is twenty-eight years; I follow farming, and occasionally flat-boating; I reside in Dearborn county, Indiana.

In answer to libellant's interrogatory 2d, says. I was acquainted with Henry Evans, we were raised boys together; have known him ever since I can recollect anything; he resided in Dearborn County, Indiana; his business was farming, and for the last ten or twelve years was engaged in flat-boating as a hand, and as a pilot.

In answer to libellant's interrogatory 3d, says. I think I have, I should judge his character to have been good considering the quality of mankind.

In answer to libellant's interrogatory 4th, says. Henry Evans has enjoyed the confidence of those among whom he lived and by whom he was employed as an honest, trustworthy man.

In answer to libellant's 5th interrogatory, says. The former part of Henry Evans' life was engaged in farming, the remaining ten or twelve years were engaged in flat-boating, first as a hand, and afterwards as a pilot; his pursuit required integrity of conduct and fidelity to his employers; he gave satisfaction to his employers as far as my knowledge extends.

In answer to libellant's 6th interrogatory, says. I would believe him under oath.

In answer to libellant's 7th interrogatory, says. I understand Henry Evans died at or near Shawnee Town, Illinois, some time in summer of 1856.

Cross-examined.

In answer to claimants' 1st interrogatory, says. I have lived there twenty-seven years; followed farming and flat-boating ever since I was old enough to work; I reside three miles from Aurora; have seen Henry Evans more or less for the last five years, but how often cannot state.

In answer to claimants' 2d interrogatory, says. I do not know, and do not believe, that Henry Evans did bear any such character at Aurora.

In answer to claimants' 3d interrogatory, says. The last time Henry Evans was at Aurora, to the best of my belief, was in the winter of 1855 and '56; so far as my knowledge and information extends, he did not bear the character of a dishonest, bad man, since he left Aurora or before.

In answer to claimants' 4th interrogatory, says. He knows nothing about it.

In answer to claimants' 5th interrogatory, says. I know nothing about the matter.

In answer to claimants' 6th interrogatory, says. Were I to receive

such information as contained in the 6th cross-interrogatory, I should not disbelieve Henry Evans under oath.

In answer to claimants' 7th interrogatory, says. I think they were good as the common run of men.

In answer to claimants' 8th interrogatory, says. I am not related to or connected with Henry Evans in any way whatever.

In answer to claimants' 9th interrogatory, says. I have not conversed with any one touching the testimony I have to give in this case; never saw Alexander Norton until introduced to him at this examination; have had no conversation with him about Henry Evans.

In answer to claimants' 10th interrogatory, says. I know the men there enumerated, and believe them to be truthful men.

PERRY SMALL.

Sworn to and subscribed, on Saturday, 2d day of May, 1857, and at place first aforesaid.

WILLIAM T. HARRIS,
Justice of the Peace.

David Buffington, of lawful age, being duly cautioned and sworn, deposes and answers to interrogatories, as follows:—

Answer to libellant's 1st interrogatory, says. My name is David Buffington; I am forty years of age; I am a flat-boat finisher and flat-boatman; I live in Dearborn Co., Indiana.

In answer to libellant's interrogatory 2d, says. I was acquainted with Henry Evans; I have known him from infancy; lived within half a mile of him; he resided in Dearborn County, Indiana; his occupation was a farmer in the former part of his life, and for the last ten or twelve years followed the river as a flat-boat hand and flat-boat pilot.

In answer to libellant's interrogatory 3d, says. I have had opportunity of knowing the character of Henry Evans for truth and honesty in the community where he resided; it was good.

In answer to libellant's interrogatory 4th, says. Henry Evans has always borne the character of an honest, trustworthy man among the community where he resided, and with those by whom he was employed.

In answer to libellant's interrogatory 5th, says. Henry Evans' occupation for the last ten or twelve years was that of a flat-boat hand and flat-boat pilot, and previous to that time a farmer; his pursuit required integrity of conduct and fidelity to his employers; I believe he always gave perfect satisfaction to those who employed him.

In answer to libellant's interrogatory 6th, says. I would certainly believe him under oath always.

In answer to libellant's interrogatory 7th, says. I understood Henry Evans died near Shawnee Town, Illinois, some time in the summer of 1856.

Cross-examination.

In answer to claimants' 1st interrogatory, says. I have lived in Dearborn Co., Indiana, about thirty-eight years; of which time, for the last ten years I have lived in the town of Aurora; I have seen Henry Evans during the last five years, from three to five times.

In answer to claimants' 2d interrogatory, says. I do not know, and do not believe that Henry Evans bore any such character in Aurora; had he borne such a character in Aurora, I should certainly have known it.

In answer to claimants' 3d interrogatory, says. The last time I saw Henry Evans in Aurora, was some time in the fall of 1855; from my knowledge and information, I do not believe that Henry Evans did bear at Aurora or elsewhere, the character of a dishonest, bad man.

In answer to claimants' 4th interrogatory, says. I do not know, to the whole 4th cross-interrogatory.

In answer to claimants' 5th interrogatory, says. I know nothing about it.

In answer to claimants' 6th interrogatory, says. Such information as is referred to in the 6th cross-interrogatory would not change my opinion of Henry Evans as an honest, reliable, and truthful man.

In answer to claimants' 7th interrogatory, says. Henry Evans's practices, associations, conduct and behavior, while he lived at Aurora, and since, were good as far as I knew and had information; and I had good opportunity of knowing whether they were good or bad.

In answer to claimants' 8th interrogatory, says. I am not related nor connected in any way.

In answer to claimants' 9th interrogatory, says. I have conversed with no one about the testimony in the case, excepting John D. Haynes, Esq., an attorney at law in Aurora, Indiana; have not seen Alexander Norton until to day, and had no conversation with him; have had no conversation whatever with Alexander Norton about Henry Evans.

In answer to claimants' 9th interrogatory, says. I know all the men enumerated in the last interrogatory, and believe them to be truthful men.

his
DAVID + BUFFINGTON.
mark.

Sworn to and subscribed on Saturday, 2d May, 1857, and at place first aforesaid.

WILLIAM T. HARRIS,
Justice of the Peace.

And the taking of depositions generally in the case, is continued until Monday, 4th day of May, 1857, at ten o'clock A. M.

WILLIAM T. HARRIS,
Justice of the Peace.

Examinations resumed Monday, 4th day of May, 1857, at 10 o'clock A. M., at the place first aforesaid.

Peter Williams, of lawful age, being duly cautioned and sworn, deposes and answers to interrogatories, as follows:—

In answer to libellant's 1st interrogatory, says. My name is Peter W. Williams; my age is thirty-nine; I am a river trader, buying and shipping produce; I reside in Dearborn Co., Indiana.

In answer to libellant's 2d interrogatory, says. I was acquainted with Henry Evans; I have known Henry Evans about ten years; I employed him in 1847, to take a boat down to New Orleans as pilot thereof; Henry Evans resided in Dearborn Co., Indiana; his business was that of a flat-boat pilot.

In answer to libellant's 3d interrogatory, says. I never heard anything to the contrary of his being a man of truth and honesty; and I had an opportunity of knowing his character in the community in which he has resided. His character was good.

In answer to libellant's 4th interrogatory, says. Henry Evans always enjoyed that confidence, so far as I know, or had any information, as an honest, trustworthy man.

In answer to libellant's 5th interrogatory, says. Henry Evans's main business was that of a flat-boat pilot; his pursuit was one that required integrity of conduct and fidelity to his employers. Henry Evans has always given satisfaction to those who employed him, as far as my knowledge and information extends.

In answer to libellant's 6th interrogatory, says. From my knowledge of the character of Henry Evans for truth and veracity, I would believe him under oath.

In answer to libellant's 7th interrogatory, says. I have heard that he is dead.

Cross-examination.

In answer to claimants' first interrogatory, says. I have lived in Dearborn County, Indiana, my present place of residence for thirteen or fourteen years; have followed my present occupation about the same length of time. My present place of residence is now made an addition to the town or city of Aurora. I have seen Henry Evans five or six times within the last five years.

In answer to claimants' 2d interrogatory, says. I do not know that Henry Evans had the character at Aurora of being a wild, reckless young man, intemperate, immoral, unsteady in his habits, and of low social position.

In answer to claimants' 3d interrogatory, says. I do not recollect the time when Henry Evans left Aurora. He did not bear the cha-

racter of a dishonest, bad man in Aurora, or since he left, as far as my knowledge and information extends.

In answer to claimants' 4th interrogatory, says. I know nothing in answer to the matters contained in the fourth cross-interrogatory.

In answer to claimants' 5th interrogatory, says. I do not know anything about the matter contained in the fifth cross-interrogatory.

In answer to the claimants' 6th interrogatory, says. If I were told upon reliable authority that Henry Evans, while descending the river, came up with portions of the cargo of a wrecked boat, that he brought them to their port of destination, there sold them, and did not turn over the proceeds to the underwriters or owners, it would not change my opinion of Henry Evans as an honest, reliable, and truthful man.

In answer to claimants' 7th interrogatory, says. While he lived at Aurora, he always appeared to me, and I understood him to be a steady, well behaved young man, and I never heard or understood of anything to the contrary since he left.

In answer to claimants' 8th interrogatory, says. I am not related or connected with Henry Evans in any way.

In answer to claimants' 9th interrogatory, says. I have never conversed with any one touching the testimony I am to give in this case. I have never seen Alexander Norton to talk with him to my knowledge.

In answer to claimants' 10th interrogatory, says. I know all the men therein enumerated, and believe them to be truthful men.

PETER W. WILLIAMS.

Sworn to and subscribed on Monday, 4th day of May, 1857, and at place first aforesaid.

WILLIAM T. HARRIS, Justice of the Peace.

John Smith, of lawful age, being duly cautioned and sworn, deposes and answers to interrogatories, as follows:—

In answer to libellant's 1st interrogatory, says. My name is John Smith; my age is forty-six years of age; my occupation is building and repairing flat-boats. I reside in Aurora, Dearborn County, Indiana.

In answer to libellant's 2d interrogatory, says. I was acquainted with Henry Evans. I have known him for some sixteen years. He resided in Dearborn County, Indiana. When he commenced business it was as a farmer. For eight years or more he has been engaged as a flat-boat hand and pilot.

In answer to libellant's 3d interrogatory, says. I have had opportunity for knowing the character of Henry Evans in the community in which he resided for truth and honesty, and know that it was good.

In answer to libellant's 4th interrogatory, says. He has, as far as I have known, among whom he has lived and by those by whom he has been employed as an honest trustworthy man.

In answer to libellant's 5th interrogatory, says. Henry Evans has, for the last eight years or more, been engaged as a flat-boat hand and pilot. His pursuit was one that required integrity of conduct and fidelity to his employers. He has given entire satisfaction to those by whom he was employed, and I had good opportunity of knowing such to be the case.

In answer to libellant's 6th interrogatory, says. I would believe him under oath.

In answer to libellant's 7th interrogatory, says. The last information I had was that he died near Shawnee Town, Illinois, some time in summer of 1856.

Cross-examination.

In answer to claimants' 1st interrogatory, says. I have lived in Dearborn County, Indiana, for the last eighteen or twenty years. Have followed my present occupation for the last eight or ten years. My residence is in the town of Aurora. I have seen Henry Evans in the last five years some three or four times.

In answer to claimants' 2d interrogatory, says. I do not know and I do not believe that Henry Evans bore such a character in the town of Aurora as described in 2d cross-interrogatory, and I had good opportunities of knowing what his character was in Aurora.

In answer to claimants' 3d interrogatory, says. The last time I saw Henry Evans at Aurora was, I think, in 1855. He did not bear the character of a dishonest bad man at Aurora, or since he left, as far as I had knowledge of.

In answer to claimants' 4th interrogatory, says. Of the matter contained in the fourth cross-interrogatory I am perfectly ignorant.

In answer to claimants' 5th interrogatory, says. Of the matter contained in the fifth interrogatory I am perfectly ignorant.

In answer to claimants' 6th interrogatory, says. I do not believe that such a statement as is contained in the sixth interrogatory would change my opinion of Henry Evans as an honest, reliable, and truthful man.

In answer to claimants' 7th interrogatory, says. That the practices, associations, conduct, and behavior of Henry Evans, while he lived at Aurora, and since, were good and proper as far as ever I know, and I had good opportunities of knowing.

In answer to claimants' 8th interrogatory, says. I am not related or connected with Henry Evans.

In answer to claimants' 9th interrogatory, says. I have conversed with no one on the subject. Have never seen Alexander Norton until this examination, and have had no conversation with him on the subject or about Henry Evans.

In answer to claimants' 10th interrogatory, says. I am acquainted with the men enumerated in the 10th cross-interrogatory, and believe them to be truthful men.

his
JOHN + SMITH.
mark.

Sworn to and subscribed on Monday, 4th day of May, 1857, and at the place first aforesaid.

WILLIAM T. HARRIS,
Justice of the Peace.

Samuel H. Webber, of lawful age, being duly sworn and cautioned, deposes and answers to interrogatories as follows:—

In answer to libellant's 1st interrogatory, says. My name is Samuel H. Webber. I am twenty-seven years of age. My occupation has been flat-boating, wharf-boat keeping, and teaming. I reside in Aurora, Dearborn County, Indiana.

In answer to libellant's 2d interrogatory, says. I was acquainted with Henry Evans. I knew him from the year 1850 to 1855. He resided in Aurora, or claimed it for his residence. He was a flat-boat pilot.

In answer to libellant's 3d interrogatory, says. I have had opportunity of knowing the character of Henry Evans for truth and veracity, and know that his character was good.

In answer to libellant's 4th interrogatory, says. As far as I have known, he has.

In answer to libellant's 5th interrogatory, says. His pursuit was that of flat-boat piloting. His pursuit was one requiring integrity of conduct and fidelity to his employers. Henry Evans has given satisfaction to those who have employed him, and I have had opportunity of knowing.

In answer to libellant's 6th interrogatory, says. From my knowledge of Henry Evans, and his character for truth and veracity, I would believe him under oath.

In answer to libellant's 7th interrogatory, says. I did not know that Henry Evans was dead until lately.

Cross-examination.

In answer to claimants' 1st interrogatory, says. I have lived in Aurora twenty-seven years. I have followed my present occupation about ten or twelve years. My residence is in Aurora. I have seen Henry Evans about a dozen times within the last five years previous to his death. Have seen him more or less every year.

In answer to claimants' 2d interrogatory, says. I do not know that Henry Evans sustained the character mentioned in the second cross-interrogatory at Aurora, and I have had ample opportunities of knowing.

In answer to claimants' 3d interrogatory, says. The last time I saw Henry Evans at Aurora was in the fall of 1855 or the spring of 1856; he did not bear the character of a dishonest, bad man in Aurora or since.

In answer to claimants' 4th interrogatory, says. The matters contained in fourth cross-interrogatory I am ignorant of.

In answer to claimants' 5th interrogatory, says. I do not know anything about it.

In answer to claimants' 6th interrogatory, says. I think it would change my opinion.

In answer to claimants' 7th interrogatory, says. I have always known Henry Evans to be an honorable, well behaved man, and have never known anything to the contrary, while he was at Aurora or since.

In answer to claimants' 8th interrogatory, says. I am in no way related or connected with Henry Evans.

In answer to claimants' 9th interrogatory, says. I have never talked with any man touching the testimony in this case; I never saw Alexander Norton until this examination, but have never spoken with him on the case or about Henry Evans.

In answer to claimants' 10th interrogatory, says. I know all the men enumerated in the 10th cross-interrogatory except John Turner, and I believe them all to be truthful men.

SAMUEL H. WEBBER.

Sworn to and subscribed, Monday, 4th May, 1857, and at the place aforesaid.

WILLIAM T. HARRIS,
Justice of the Peace.

Tuesday. Examinations resumed on Tuesday, May 5th, 1857, at 10 o'clock A. M., and at the place first aforesaid.

Allen W. Lewis, of lawful age, being duly cautioned and sworn, deposes and answers to interrogatories, as follows:—

In answer to libellant's 1st interrogatory, says. My name is Allen W. Lewis; my age is 30 years; my occupation that of a flat-boat pilot; I reside in Aurora, Dearborn County, Indiana.

In answer to libellant's 2d interrogatory, says. I have been acquainted with Henry Evans between nine and ten years; he resided in Dearborn County, Indiana; Henry Evans has been engaged in flat-boat piloting since I knew him, and I have run under him as second pilot.

In answer to libellant's 3d interrogatory, says. I have had an opportunity for knowing the character of Henry Evans in the community in which he resided, and I can say his character for truth and honesty was good.

In answer to libellant's 4th interrogatory says. Henry Evans has enjoyed the confidence of an honest, trustworthy man among the community where he lived, and by those by whom he was employed.

In answer to libellant's 5th interrogatory, says. Henry Evans's pursuit and occupation was that of a flat-boat pilot; his pursuit was one that required integrity of conduct and fidelity to his employers; he has given satisfaction to those who have employed him from my own knowledge.

In answer to libellant's 6th interrogatory, says. From my knowledge of Henry Evans's character for truth and veracity, I would believe him under oath.

In answer to libellant's 7th interrogatory, says. I cannot say where Henry Evans is.

Cross-examination.

In answer to claimants' first interrogatory, says. I have lived in Aurora, Dearborn Co., Indiana, eight years, and in the county of Dearborn, Indiana, since I was nine years old; I have been flat-boat hand for eight years, and a flat-boat pilot for the last ten years; I reside in Aurora; I have seen Henry Evans some three or four times within the last five years.

In answer to claimants' 2d interrogatory, says. I do not know that Henry Evans did bear the character in Aurora specified in the 2d cross-interrogatory.

In answer to claimants' 3d interrogatory, says. The last time I saw Henry Evans in Aurora was about four years ago, but I have seen him since at other places; he did not bear the character of a dishonest, bad man since he left Aurora.

In answer to claimants' 4th interrogatory, says. To the contents of the fourth cross-interrogatory, I am perfectly ignorant.

In answer to claimants' 5th interrogatory, says. I know nothing about the difficulty spoken of in the fifth cross-interrogatory.

In answer to claimants' 6th interrogatory, says. From the statement made in the 6th cross-interrogatory, my opinion of Henry Evans would not be changed as an honest, reliable, and truthful man.

In answer to claimants' 7th interrogatory, says. Henry Evans's practices, associations, conduct, and behavior, while he lived at Aurora, and since, were good as far as I know.

In answer to claimants' 8th interrogatory, says. I am not related or connected in any way with Henry Evans.

In answer to claimants' 9th interrogatory, says. I have not conversed with any person touching the testimony I am to give in this case; I do not know Alexander Norton, and have had no conversation with him about Henry Evans.

In answer to claimants' 10th interrogatory, says. I know all the men enumerated in the tenth cross-interrogatory, and they are truthful men.

ALLEN W. LEWIS.

Sworn to and subscribed, Tuesday, 5th May, 1857.

WILLIAM T. HARRIS,
Justice of the Peace.

Moses R. Smith, of lawful age, being duly cautioned and sworn, deposes and answers to interrogatories as follows:—

In answer to libellant's 1st interrogatory, says. My name is Moses

R. Smith; my age is about 47 years; my occupation is a steamboat engineer; I reside in Dearborn County, Indiana.

In answer to libellant's 2d interrogatory, says. I was acquainted with Henry Evans; I have known him some seven or eight years; he made his home in Aurora, Dearborn County, Indiana, while I was acquainted with him; Henry Evans was a flat-boat pilot.

In answer to libellant's 3d interrogatory, says. I have had good opportunity of knowing the character Henry Evans bore for truth and honesty in the community where he resided; his character was good.

In answer to libellant's 4th interrogatory, says. Henry Evans has enjoyed the character among those where he lived, and by those who employed him, as an honest, trustworthy man.

In answer to libellant's 5th interrogatory, says. Henry Evans was a flat-boat pilot while I knew him; his pursuit was one that required integrity of conduct and fidelity to his employers; he has given satisfaction to those who have employed him.

In answer to libellant's 6th interrogatory, says. From my knowledge of the character of Henry Evans for truth and veracity I would at any time believe him under oath.

In answer to libellant's 7th interrogatory, says. I do not know where Henry Evans now is.

Cross-examination.

In answer to claimants' 1st interrogatory, says. I have lived at my present place of residence, Dearborn County, Indiana, some seventeen years; have followed my present occupation some twenty-six years; I reside in Aurora; I have seen Henry Evans some half-a-dozen times within the last five years.

In answer to claimants' 2d interrogatory, says. I never knew such a character attached to Henry Evans as described in the 2d cross-interrogatory while at Aurora or since.

In answer to claimants' 3d interrogatory, says. I cannot recollect the time when he left Aurora; since he left Aurora he did not bear the character of a dishonest, bad man to my knowledge.

In answer to claimants' 4th interrogatory, says. I do not know anything touching the subject matter of the 4th cross-interrogatory.

In answer to claimants' 5th interrogatory, says. I know nothing of the matter inquired after in the fifth cross-interrogatory.

In answer to claimants' 6th interrogatory, says. If the statement contained in the 6th cross-interrogatory were made to me in the manner there stated, it would not change my opinion of Henry Evans as an honest, reliable and truthful man.

In answer to claimants' 7th interrogatory, says. I never knew anything wrong with Henry Evans as to his practices, associations, conduct and behavior while he lived at Aurora and since.

In answer to claimants' 8th interrogatory, says. I am not related or connected in any way with Henry Evans.

In answer to claimants' 9th interrogatory, says. I have not conversed with any one touching the testimony I am to give in this case; I have seen Alexander Norton in Aurora since the taking of this deposition; have not talked with him about Henry Evans.

In answer to claimants' 10th interrogatory, says. I am acquainted with all the persons enumerated in the tenth interrogatory, excepting John Turner; they are truthful men.

MOSES R. SMITH.

Sworn to and subscribed Tuesday, 5th May, 1857, and at the place aforesaid. WILLIAM T. HARRIS,
Justice of the Peace.

John Cure, of lawful age, being duly cautioned and sworn, deposes and answers to interrogatories as follows:—

In answer to libellant's 1st interrogatory, says. My name is John Cure; my age is thirty-three; I am a house painter; formerly I was a flat-boatman on the Ohio and Mississippi; I have resided in the town of Aurora about ten years.

In answer to libellant's 2d interrogatory, says. I was acquainted with Henry Evans for ten years or more; he resided in Dearborn Co., Indiana; Henry Evans was known as a flatboat pilot.

In answer to libellant's 3d interrogatory, says. I had an opportunity of knowing the character for truth and honesty of Henry Evans among the community in which he resided; it was good.

In answer to libellant's 4th interrogatory, says. He has enjoyed the character of an honest, trustworthy man, among whom he has lived, and by those who employed him, as far as my knowledge extends.

In answer to libellant's 5th interrogatory, says. Henry Evans was a flatboat pilot as long as I have known him; his pursuit was one that required integrity of conduct and fidelity to his employers; he has given satisfaction to his employers, as far as my knowledge extends.

In answer to libellant's 6th interrogatory, says. From what I know of Henry Evans and his character for veracity and truth, I should believe him under oath.

In answer to libellant's 7th interrogatory, says. I have understood from his sisters, with whom I am acquainted, that Henry Evans died near Shawnee Town, Illinois.

Cross-examination.

In answer to claimants' 1st interrogatory, says. I was born in Dearborn Co., Indiana, and have lived here ever since. I have followed my present occupation seven years. I live in the town of Aurora. I have seen him several times, cannot tell how often, within the last five years.

In answer to claimants' 2d interrogatory, says. I do not know

that Henry Evans bore the character at Aurora described in the cross second interrogatory.

In answer to claimants' 3d interrogatory, says. I cannot say when he left Aurora; Henry Evans did not bear the character of a dishonest, bad man since he left Aurora, to my knowledge.

In answer to claimants' 4th interrogatory, says. I know not anything about the matter contained in the fourth interrogatory.

In answer to claimants' 5th interrogatory, says. I do not know anything about the business spoken of in the fifth interrogatory.

In answer to claimants' 6th interrogatory, says. If the matters contained in the 6th interrogatory were told to me, and in the way there described, it would not change my opinion of Henry Evans as an honest, reliable, and truthful man. I should believe his word.

In answer to claimants' 7th interrogatory, says. I do not know anything against the character of Henry Evans while he lived at Aurora.

In answer to claimants' 8th interrogatory, says. I am not related to him.

In answer to claimants' 9th interrogatory, says. I have not had conversation with any one touching the testimony I am to give in this case. I do not know Alexander Norton. I have not talked with him about Henry Evans.

In answer to claimants' 10th interrogatory, says. I know all the persons mentioned in the tenth cross-interrogatory; they are truthful men, as far as my knowledge extends.

JOHN CURE.

Sworn to and subscribed Tuesday, 5th May, 1857, and at the place first aforesaid.

WILLIAM HARRIS,
Justice of the Peace.

The taking of depositions generally in the case is continued until to-morrow morning at 10 o'clock A. M.

WILLIAM T. HARRIS,
Justice of the Peace.

Examinations resumed on Wednesday 6th May, 1857, at ten o'clock A. M.

Andrew J. Gray, of lawful age, being duly cautioned and sworn, deposes and answers to interrogatories, as follows:—

In answer to libellant's 1st interrogatory, says. My name is Andrew J. Gray; my age is forty-two years; my occupation was that of a steamboat pilot for thirteen years, and for the last six years I have been acting as deputy sheriff of the county and marshal of the city of Lawrenceburgh; I reside in Lawrenceburgh, Dearborn County, Indiana.

In answer to libellant's 2d interrogatory, says. I have been acquainted with Henry Evans nearly the whole of his life; Henry

Evans resided in Dearborn County, Indiana; I believe he was a flat-boat pilot.

In answer to libellant's 3d interrogatory, says. I have had opportunity for knowing the character for truth and honesty in the community in which he resided; his character was good.

In answer to libellant's 4th interrogatory, says. I think he has; I never heard anything said contrary to his character in any shape or form.

In answer to libellant's 5th interrogatory, says. Since he became a man he has been a flat-boat pilot to the time of his death; it was a pursuit that required integrity of conduct and fidelity to his employers; he has given satisfaction to those who employed him as far as I ever knew.

In answer to libellant's 6th interrogatory, says. From my knowledge of his character for truth and veracity I would believe Henry Evans under oath under any circumstances.

In answer to libellant's 7th interrogatory says. From my best information he is dead.

Cross-examination.

In answer to claimants' 1st interrogatory, says. I have lived in Lawrenceburgh, Indiana, for the last nine years; have lived nearly all my life in Dearborn County, Indiana; I followed the occupation of steamboat pilot for 13 years, and for the last six years I have been acting as deputy sheriff of the county and marshal of the city of Lawrenceburgh; I reside four miles from Aurora; I have seen Henry Evans frequently within the last five years.

In answer to claimants' 2d interrogatory, says. Henry Evans had not the character there described, at Aurora, to my knowledge.

In answer to claimants' 3d interrogatory, says. I cannot tell when he left Aurora; I never heard that Henry Evans bore the character of a dishonest, bad man since he left Aurora.

In answer to claimants' 4th interrogatory, says. I know nothing of the matters contained in the 4th cross-interrogatory.

In answer to claimants' 5th interrogatory, says. I do not know anything about a difficulty he had with his crew or with any other person as contained in the fifth cross-interrogatory.

In answer to claimants' 6th interrogatory, says. I do not believe that such information, and so given in the 6th cross-interrogatory, would change my opinion of the character of Henry Evans for an honest, reliable, and truthful man.

In answer to claimants' 7th interrogatory, says. I never knew anything contrary to the character of Henry Evans while he lived in Aurora, and always understood his practices, associations, conduct, and behavior were those of a gentleman; I had ample opportunities from my frequent visits to Aurora of knowing.

In answer to claimants' 8th interrogatory, says. I am not related or connected in any way with Henry Evans.

In answer to claimants' 9th interrogatory, says. I have not conversed with any one touching the testimony I am to give in this case; I have seen Alexander Norton for a short time; have had no conversation further with him than he asked me if I knew Henry Evans.

In answer to claimant's 10th interrogatory, says. I know all the persons mentioned in the tenth cross-interrogatory and believe them to be truthful men.

ANDREW J. GRAY.

Sworn to and subscribed Wednesday 6th May, 1857, and at the place first aforesaid. WILLIAM T. HARRIS,
Justice of the Peace.

John H. Thompson, of lawful age, being duly cautioned and sworn, deposes and answers to interrogatories as follows:—

In answer to libellant's 1st interrogatory, says. My name is John H. Thompson. I am twenty-two years of age. I am a flat-boat man. I reside in Aurora, Dearborn Co., Indiana.

In answer to libellant's 2d interrogatory, says. I was acquainted with Henry Evans. I knew him for nine or ten years. He resided at Aurora when I first became acquainted with him. His business was that of a flat-boat pilot.

In answer to libellant's 3d interrogatory, says. I have had opportunity of knowing the character for truth and honesty of Henry Evans in the community where he resided. His character was good.

In answer to libellant's 4th interrogatory, says. Henry Evans has enjoyed the character, among the community where he resided, and by those who employed him, as an honest, trustworthy man.

In answer to libellant's 5th interrogatory, says. Henry Evans' pursuit, since I have known him, has been that of a flat-boat pilot; his pursuit was one that required integrity of conduct and fidelity to his employers; he has given satisfaction to those who have employed him, as far as I have known or heard.

In answer to libellant's 6th interrogatory, says. From my knowledge of Henry Evans' character for truth and veracity, I would believe him under oath.

In answer to libellant's 7th interrogatory, says. I have heard that Henry Evans is dead, and that he died near Shawnee Town, Illinois.

Cross-examination.

In answer to claimants' 1st interrogatory, says. I have lived at my present place of residence about nine or ten years; have followed my present occupation about six years. I reside in the town of Aurora. I have seen Henry Evans about three times within the last five years.

In answer to claimants' 2d interrogatory, says. I do not know that Henry Evans bore the character, at Aurora, of being a wild, reckless young man, intemperate, immoral, unsteady in his habits, and of low social position, and do not believe it.

In answer to claimants' 3d interrogatory, says. I do not recollect when Henry Evans did leave Aurora. I never did hear that Henry Evans bore the character of a dishonest, bad man, since he left Aurora.

In answer to claimants' 4th interrogatory, says. I know nothing of the matters contained in the fourth cross-interrogatory.

In answer to claimants' 5th interrogatory, says. I know nothing of the matters contained in the fifth cross-interrogatory.

In answer to claimants' 6th interrogatory, says. I do not think that the information contained in the sixth cross-interrogatory would change my opinion of Henry Evans as an honest, reliable, and truthful man.

In answer to claimants' 7th interrogatory, says. Henry Evans's practices, associations, conduct, and behavior, while he lived at Aurora, were good, as far as I know.

In answer to claimants' 8th interrogatory, says. I am not related to or connected with Henry Evans in any way.

In answer to claimants' 9th interrogatory, says. I have not conversed with any one touching the testimony I have to give in this case. I have seen Alexander Norton only since my present examination, and have not conversed with him about Henry Evans.

In answer to claimants' 10th interrogatory, says. I know all the persons mentioned in the 10th cross-interrogatory excepting John Turner, and they are all truthful men.

JOHN H. THOMPSON.

Sworn to and subscribed, on Wednesday, 6th May, 1857, and at the place first aforesaid.

WILLIAM T. HARRIS,
Justice of the Peace.

Frank Sketter, of lawful age, being duly cautioned and sworn, deposes and answers to interrogatories as follows:—

In answer to libellant's 1st interrogatory, says. My name is Frank Sketter; I am 26 years of age; my occupation is that of a flat-boatman and flat-boat pilot: I reside in Lawrenceburg, Dearborn Co., Indiana.

In answer to libellant's 2d interrogatory, says. I was acquainted with Henry Evans; I have known him seven or eight years; he belonged about Aurora as long as I have known him; he was a flat-boat pilot.

In answer to libellant's 3d interrogatory, says. I have had opportunity of knowing the character for truth and honesty of Henry Evans in the community in which he resided, and his character was good.

In answer to libellant's 4th interrogatory, says. Henry Evans has enjoyed the confidence of those among whom he resided, and by those who employed him, as an honest, trustworthy man.

In answer to libellant's 5th interrogatory, says. He has been a boatman and flat-boat pilot ever since I knew him: his pursuit was one that required integrity of conduct and fidelity to his employers; he has given satisfaction to all who have employed him, and I had every opportunity of knowing.

In answer to libellant's 6th interrogatory, says. I would believe him under oath as quick as I would believe any man in Aurora.

In answer to libellant's 7th interrogatory, says. I have understood Henry Evans is dead from those who knew him; that he died some time last summer.

Cross-examination.

In answer to claimants' 1st interrogatory, says. I have lived at my present place of residence about fifteen years; I have followed my present occupation about nine years; my residence is about four miles from the town of Aurora; I have seen Henry Evans very frequently during the last five years.

In answer to claimants' 2d interrogatory, says. I do not know that Henry Evans ever bore the character mentioned in the 2d cross-interrogatory at Aurora, and I do not believe it.

In answer to claimants' 3d interrogatory, says. I cannot tell when Henry Evans left Aurora; he did not bear the character of a dishonest, bad man since he left Aurora.

In answer to claimants' 4th interrogatory, says. I know nothing of the matters stated in the fourth cross-interrogatory.

In answer to claimants' 5th interrogatory, says. I do not know anything about the difficulty spoken of in the 5th cross-interrogatory.

In answer to claimants' 6th interrogatory, says. The statements made in the sixth cross interrogatory, and on the authority there spoken of, would not have changed my opinion of Henry Evans as an honest, reliable and truthful man.

In answer to claimants' 7th interrogatory, says. As far as I know, Henry Evans was honorable, and his character was good, as to his practices, associations, conduct and behavior while he lived at Aurora, and since.

In answer to claimants' 8th interrogatory, says. I am neither related to nor connected with Henry Evans in any way.

In answer to claimants' 9th interrogatory, says. I have not conversed with any one about the case, and knew nothing of it until my examination; I do not know Alexander Norton, and since this last question was put to me only know the man; have had no conversation with him about Henry Evans or any other matter.

In answer to claimants' 10th interrogatory, says. I know John D. Haynes, James W. Weaver, and Isaac N. Cochran, and believe them to be truthful men; the other persons mentioned I know not.

FRANK SKETTER.

Sworn to and subscribed Wednesday 6th May, 1857, and at the place first aforesaid. WILLIAM T. HARRIS,
Justice of the Peace.

Abraham Farrall, of lawful age, being duly cautioned and sworn, deposes and answers to the interrogatories, as follows:—

In answer to libellant's 1st interrogatory, says. My name is Abraham Farrall; I am forty-three years old; my occupation has been farming and boating; I reside in Lawrenceburgh, Dearborn Co., Indiana.

In answer to libellant's 2d interrogatory, says. I was acquainted with Henry Evans; I have known him nine years; he resided in Aurora at the time I was acquainted with him; he was a flat-boat pilot.

In answer to libellant's 3d interrogatory, says. I had opportunity of knowing the character of Henry Evans for truth and honesty in the community where he resided; his character was good.

In answer to libellant's 4th interrogatory, says. As far as I know Henry Evans enjoyed the confidence of those among whom he resided, and by those who employed him as an honest, trustworthy man.

In answer to libellant's 5th interrogatory, says. Henry Evans since I have known him has been engaged as a flat-boat pilot; his pursuit was one that required integrity of conduct and fidelity to his employers; he has always given satisfaction to those who have employed him, as far as I have known.

In answer to libellant's 6th interrogatory, says. From my knowledge of him I would believe him under oath as quick as any other man, for his character for truth and veracity.

In answer to libellant's 7th interrogatory, says. I do not where he is; I have heard from his friends that he is dead.

Cross-examination.

In answer to claimants' 1st interrogatory, says. I have lived at my present place of residence about seventeen years; I have followed my present occupation, of piloting flat-boats, for the last ten years; my residence is four miles from the town of Aurora; I have seen Henry Evans frequently within the last five years, but cannot tell how often.

In answer to claimants' 2d interrogatory, says. I do not know and I do not think that Henry Evans bore the character at Aurora, stated in the second cross-interrogatory; had he done so, I believe I should have known it.

In answer to claimants' 3d interrogatory, says. I do not know when he left Aurora; I never heard that Henry Evans bore the character of a dishonest, bad man since he left Aurora.

In answer to claimants' 4th interrogatory, says. I know nothing about the matters contained in the fourth cross-interrogatory.

In answer to claimants' 5th interrogatory, says. I know nothing of the difficulty mentioned in the 5th cross-interrogatory.

In answer to claimants' 6th interrogatory, says. If the statements contained in the sixth cross-interrogatory were made to me, and in the manner there stated, they would not change my opinion of Henry Evans as an honest, reliable, and truthful man.

In answer to claimants' 7th interrogatory, says. I have never heard anything bad of Henry Evans' practices, associations, conduct and behavior, while he lived at Aurora or since.

In answer to claimants' 8th interrogatory, says. I am not related to or connected with Henry Evans.

In answer to claimants' 9th interrogatory, says. I have not conversed with any one touching the testimony I am to give in this case. I have never seen Alexander Norton until to-day. I have never talked with him about Henry Evans or the case.

In answer to claimants' 10th interrogatory, says. I do not know any of the persons mentioned in the 10th cross-interrogatory.

ABRAM FARRALL.

Sworn to and subscribed Wednesday, 6th May, 1857, and at the place first aforesaid. WILLIAM T. HARRIS,
Justice of the Peace.

John B. Durbin, of lawful age, being duly cautioned and sworn, deposes and answers to interrogatories as follows:—

In answer to libellant's 1st interrogatory, says. My name is John B. Durbin; I am thirty-nine years old; I am a carpenter by occupation; I reside in Aurora, Dearborn Co., Indiana.

In answer to libellant's 2d interrogatory, says. I was acquainted with Henry Evans; I have known him since the year 1836; he resided in Dearborn Co., Indiana; he was a flat-boat pilot.

In answer to libellant's 3d interrogatory, says. I have had opportunity of knowing the character for truth and honesty of Henry Evans in the community in which he resided; his character was good.

In answer to libellant's 4th interrogatory, says. Henry Evans has enjoyed the confidence of those among whom he lived, and by those who employed him, as an honest, trustworthy man.

In answer to libellant's 5th interrogatory, says. His pursuit was that of a flat-boat pilot. His pursuit required integrity of conduct and fidelity to his employers. As far as I know of, he has given satisfaction to those who employed him.

In answer to libellant's 6th interrogatory, says. I would believe Henry Evans from my knowledge of his character for truth and veracity under oath under any circumstances.

In answer to libellant's 7th interrogatory, says. I have understood he is dead.

Cross-examination.

In answer to claimants' 1st interrogatory, says. I have lived at my present place of residence twenty-one years; have followed my present occupation for twenty-four years. I live in the town of Aurora. I have seen Henry Evans frequently within the last five years, but cannot tell how often.

In answer to claimants' 2d interrogatory, says. I never knew that Henry Evans sustained the character described in the 2d cross-interrogatory at Aurora or elsewhere; if he had borne that character I should have known it.

In answer to claimants' 3d interrogatory, says. I do not know exactly when Henry Evans left Aurora. He did not bear the character of a dishonest, bad man, since he left Aurora, as far as I know.

In answer to claimants' 4th interrogatory, says. I do not know anything about the matters contained in the fourth cross-interrogatory.

In answer to claimants' 5th interrogatory, says. I do not know anything about the matter contained in the 5th cross-interrogatory.

In answer to claimants' 6th interrogatory, says. If such information as detailed in the 6th cross-interrogatory, and in the manner there expressed, were stated to me, it would not change my opinion of Henry Evans as an honest, reliable, and truthful man.

In answer to claimants' 7th interrogatory, says. I know nothing about Henry Evans's practices, associations, conduct, and behavior, other than they were respectable and gentlemanly.

In answer to claimants' 8th interrogatory, says. I am not related to or connected in any way with Henry Evans.

In answer to claimants' 9th interrogatory, says. I have never conversed with any one touching the testimony I am to give in this case. I first met him at this examination. I have not talked with him about Henry Evans, or anything relating to the case.

In answer to claimants' 10th interrogatory, says. I know all the persons mentioned but John Turner, and they are truthful men, as far as I know.

JOHN B. DURBIN.

Sworn to and subscribed Wednesday, 6th May, 1857, and at the place first aforesaid.

WILLIAM T. HARRIS, Justice of the Peace.

In the District Court of the U. States, holding sessions at New Orleans, in and for the Eastern District of Louisiana.

A. B. (Copy.)

ALEXANDER NORTON
vs.
The Steamboat H. R. W. HILL et alias.

John D. Haynes, Esq., will please take notice that the said Alex-

ander Norton will proceed to take depositions in the above cause before William T. Harris, Esq., a justice of the peace in and for Centre Township, Dearborn County, State of Indiana, at his office in the city of Aurora, commencing at 10 o'clock A. M., on Thursday, the 30th day of April, 1857, and continue to take the same from day to day, Sundays excepted, between the hours of ten o'clock A. M., and 6 o'clock P. M., at same place and before same officer, until all are taken. RYMAN & BEN. SPOONER,

Att'ys for Plaintiff.

Aurora, April 29th, 1857.

Served by copy, one at office, and one at dwelling house of J. D. H. by W. T. H., 29th April, 1857.

I, William T. Harris, a justice of the peace within and for the county of Dearborn, in the State of Indiana, do hereby certify that David Nevitt, Joshua Sanks, James Walser, William M. Cheek, Francis Worley, Eleazer Small, William H. Small, Perry Small, David Buffington, Peter W. Williams, John Smith, Samuel H. Webber, Allen W. Lewis, Moses R. Smith, John Cure, Andrew J. Gray, John H. Thompson, Frank Sketter, Abram Farrall, and John Durbin, the deponents, whose names are subscribed to the foregoing depositions, were by me severally sworn to disclose the truth, the whole truth, and nothing but the truth, on and to the questions put to him in the cause; that they were each so sworn, before any interrogatories were propounded or answers given; that the interrogatories and cross-interrogatories were produced to them, their answers thereto taken in writing by me. The interrogatories and cross-interrogatories, with their answers thereto read over to them, and then, and not before, were they subscribed by them respectively in my presence, on the days noted by me at the head and termination of each deposition; that the said depositions were commenced on Thursday, the 30th day of April (1857), eighteen hundred and fifty-seven, at 10 o'clock A. M., and were continued and taken from day to day, Sundays excepted, at same place, to wit, at my office in the city of Aurora, in the county of Dearborn, in the State of Indiana, between the hours of ten o'clock A. M., and six o'clock P. M. And I further certify that I served a copy of the notice hereto attached and marked (A. B.) on John D. Haynes, Esq., attorney-at-law at Aurora, Indiana, on Wednesday, the 29th day of April, 1857, by leaving a copy thereof at his office, and one copy thereof at his place of residence; that said Haynes appeared and was present at the taking of said depositions only on the 2d, 3d, and 4th days of the taking thereof.

In testimony whereof, I have hereunto set my hand and seal, this 7th day of May, in the year of our Lord 1857.

WILLIAM J. HARRIS, [SEAL.]

Justice of the Peace.

State of Indiana, Dearborn County.

I, Samuel L. Jones, clerk of the Dearborn Circuit Court, hereby certify that Wm. T. Harris, before whom the foregoing depositions were taken, was at the date thereof an acting justice of the peace within and for said county of Dearborn, duly elected, commissioned, and qualified according to law, and that the signature purporting to be is genuine.

Witness my name and the seal of said court hereunto affixed at Lawrenceburgh, this 11th day of May, 1857.

[SEAL.] SAMUEL L. JONES, Clerk.

Testimony of Pennington Ray, filed May, 21st, 1857.

Testimony on behalf of Libellant.

ALEXANDER NORTON
vs.
The Steamer H. R. W. HILL et al.

Pennington Ray being duly sworn deposes and says: That he resides in Armstrong County, Pennsylvania; deponent was a witness to a collision which occurred on the Mississippi River towards the end of the year 1852, between the H. R. W. Hill and the Western World; deponent was on a pair of flat-boats which were in charge of Henry Evans as pilot; deponent was one of the hands; the collision occurred somewhere between four and five o'clock in the morning; witness was below when Evans cried out "oars," which was the signal for us to come out; witness came out immediately; it was then raining; Evans called out to bring out a lantern. When deponent came out he saw two boats, one ascending and the other descending; the ascending boat was then below the flat-boats and the descending boat was above; the descending boat seemed closest to us; both the boats were between the flat boat and the left or Mississippi shore; after the collision they looked as if they were going to make a landing on that shore; they were quite close to it; deponent heard a great ringing of bells and much noise; heard the concussion of the two boats as they came together; the boats were about two hundred or two hundred and fifty yards from the flat when they came together, in between the flat and the Mississippi shore, nearly opposite or a little below the flat—probably the flats were not so far from the boats as deponent has stated above, because casks of bulk pork from the wreck filled with water and sank quite near or by the side of the flat; deponent did not know at the time that much damage had been done; a little while after saw the wreck; she seemed to be low in the water, could not say whether she was capsized or not; some of the hands took one of the yawls and went to the wreck; Evans would not allow the other yawl to be taken as he said it might affect his insurance. The men in the yawl returned after a while with articles they had taken from the wreck. The flat-boats did not stop, they kept run-

ning all that day; the flats had been running all that night; did not see or hear of any boats passing us that night; deponent had been off watch four or five hours, when the pilot called out "oars."

Cross-examination.

I was asleep when Evans called oars; I suppose I had not been out more than 10 or 15 minutes when I heard the boats strike.

The wreck followed us in sight for two hours; it was just after the boats struck, perhaps four or five minutes, that we saw the cargo all around us; one or two of the casks sunk near enough for one of our side oars to touch it; and we laid hold of one cask and pulled it up; we never lost sight of the wreck from the time we saw the freight around us, until about a couple of hours; it was all that time floating along behind us, low in the water.

My brother and myself went out from our boat in a skiff, and picked up portions of the cargo, 5 tierces marked prime leaf lard, and 4 or 5 kegs lard. Two others of the crew caught a spy-glass, some comforts and clothing, 14 canvassed hams, 3 boxes cigars, and a pillow-case full of papers. The papers were wet.

We divided the clothing and comforts among ourselves. The lard came on to New Orleans; I sold the hams at Baton Rouge, and the bulk pork at Donaldsonville; Evans told me to keep the money until we got down; some one told the insurance company that I had the money; some officer of the insurance company came up to Carrollton, and demanded the money of me, and I gave it up to him.

The last I saw of the lard it was on the boat that came down to New Orleans, when I stopped at Carrollton. When I came down two or three days after, Evans was said to have gone home. I did not see him, and I know nothing of the trouble he had about the lard.

The Hill appeared to be stationary from the time of the collision as long as she was in sight of us. I thought the boats had both gone ashore. We saw the freight around us before we saw the wreck. The first knowledge I had of the wreck was seeing the freight all around us; but I heard the noise when the boats struck. It was not more than 10 or 15 minutes after I heard the noise of the striking of the boats before I saw the wreck following us. It could hardly have been as long; for we had not picked up any of the freight at that time. At the time we first saw the cargo around us, I looked back and saw the river full of boxes, bundles, kegs floating behind us, some of it not more than fifty or sixty feet from us. We could see it clear back to the wreck. I don't think we went back further than 100 feet from our boat to pick up cargo. The most that we picked up was nearer than that. From the time I saw the freight in the river, I never lost sight of the wreck until about two hours. At the time I first saw the wreck, she was not further than across the river from us, not a quarter of a mile. The

last sight I had of the wreck it was about a half a mile from us, still behind. We had gained a little by occasionally pulling. From the time I first saw the wreck, the Hill appeared to be stationary. I thought she was laid up at the shore as long as she was in our sight, the wreck of the Western World continuing all the time to follow us. I did not see the Hill move off, or proceed on her voyage as long as we were in sight.

At the time I first saw the cargo around us, I could have seen a barrel a floating in the river fifty yards off, if I had looked purposely for it. But it was so thick around us that there was no necessity for looking so far. It was raining at the time we were first called. I did not look purposely to see the shores when I first came out; but I saw them soon after. It was not over half an hour after Evans called us before it began to get light, so that we could see both shores.

We were nearest to the left-hand shore when it became fully daylight. The freight was then making over for the right-hand shore. This was about eight miles below the place of the collision. It was not fully daylight when we first saw the wreck.

The Western World never passed our boat that night, at least not after I came out. She was behind us at that time. She came down and had got opposite us, or a little below, when the collision occurred. I did not see her stern light. Perhaps we were from 150 to 250 yards from her. We must have been very near, because the freight was so close to us. Immediately, I thought the boats went ashore. They seemed to be at the shore, and the light was stationary. There was quite a large light, like a torchlight; can't say whether it was on the shore or on the Hill. It appeared to be stationary. The Hill did not follow us at all; but the wreck of the Western World did immediately follow us. It was from 5 to 10 minutes, may have been 15, after I heard the stroke of the collision that I saw the wreck following us.

When I first saw the wreck, I saw the light of the Hill. It continued in the same place, and did not move as long as we were in sight.

We did not stop at Vicksburg. Nobody went ashore there, as I know of. The night after the collision we laid up; next day we passed Vicksburg. I do not think Evans went out at Vicksburg. He was very strick about that, and did not leave the boats except when they landed; I know he would not go ashore and leave the boats.

When I first came out it appeared to be dark; but as soon as I began to look around a little, it was not so dark; it was a good night for running. It was raining pretty smart when I first came out.

The boats were said to belong to Murray & Buzzino. They were loaded somewhere below Cincinnati, at Hunter's Bottom, on the left hand shore, but I do not know whether it was Kentucky or Virginia; Kentucky I guess, but I am not certain.

I heard one boat give her signal, and I think it was the down

stream boat. I did not hear any engine bells until just as I heard the crash, and then I heard a great jingling of engine bells, but I could not make any distinction as to what they were for.

Henry Evans was astern of me. I was standing about 20 feet forward of him when the boats struck. The stern of our boats was towards the steamers, and we were heading across the river, pulling out from the boats.

Re-examination resumed.

The wreck of which deponent has been speaking was the cabin of the steamer, the hull might have behind. The segars, the comforts, the clothes, and spy-glass, which were taken from her, satisfied me of this. He saw the men who got these things, go to and come from the wreck.

Re-cross-examination.

I can't tell which boat was nearest the Mississippi shore. They both looked to be the same distance. They both looked like they were going to our left when they struck; I cannot say which was on the inside or nearest the shore. I could not tell which of the boats was nearest us. PENINGTON RAY.

Sworn to and subscribed before me this May 21st, 1857.

A. LAVISSON,
D'y Cl'k U. S. Circuit Court.

Deposition of Wesley Ray, taken on the 25th and 26th days of August, 1857. Filed 15th Sept'b'r, 1857, and opened in open court by order of court, 25th March, 1858.

Circuit Court of the United States for the 5th Judicial Circuit, holding sessions in and for the Eastern District of Louisiana.

To any U. S. Commissioner, Judge, or Justice of the Peace, or to any other person authorized to take testimony for the courts of the United States in Alleghany County, Pa:—

Know ye, that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you Westley Ray, and such others as the parties may call before you, and them duly examine on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein Alexander Norton is libellant, and the steamboat H. R. W. Hill and owners are libellees and defendants; and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send inclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 25th day of July, Anno Domini 1857, and the 82d year of the Independence of the United States of America.

[SEAL.] J. W. GURLEY, Clerk.

Interrogatories.

Circuit Court U. S. for the Fifth Circuit, Eastern District of Louisiana.

ALEXANDER NORTON
vs.
The Steamboat H. R. W. HILL and Others.

Interrogatories to be propounded to Westley Ray and others, witnesses, to be produced, sworn and examined on behalf of the libellant in the above entitled cause.

1st interrogatory. What is your name, age, and occupation?

2d interrogatory. Were you a witness to a collision between the H. R. W. Hill and the Western World in the month of December, 1852? If yea, state all that you know concerning it.

3d interrogatory. Were you on the river at the time of the said collision? If yea, on what boat? if on neither the Hill nor the Western World, state how near you were to them at the time of the collision? what was your position in relation to them; were you above or below them?

4th interrogatory. Describe the movements of the two boats from the time you first saw them, or either of them, until they came together—did you hear any signal or signal bells ring? If yea, state on what boat and in what order they were rung; how far were the boats from either shore at the time of the collision? to which shore were they nearer—the Arkansas or Mississippi shore? how far were you from either shore at the time of the collision? was the place of collision nearer to the shore than where you were? If yea, to what shore and how much nearer?

5th interrogatory. What occurred immediately after the collision? did either of the boats sink? If yea, which one? did either go into the shore? If yea, which boat, and into what shore, and how far below the place of collision?

6th interrogatory. Do you know any other matter or thing to the advantage of the libellant, who, as owner of the Western World, sues the defendants for damages for the loss of the boat and cargo occasioned by the collision? If yea, state the same as length as fully as if you were particularly interrogated thereto.

P. E. BONFORD, Proctor for Libellant.

Now comes the claimants and respondent in the above entitled cause, and reserving the benefit of all just and legal exceptions whatsoever to the foregoing interrogatories, and to the answers which may be given to the same, nevertheless propound the following cross-interrogatories:—

First. How long have you lived where you now reside?

Second. When were you at New Orleans last? how many times have you been there since April, 1853? how often have you seen

Alexander Norton since April, 1853? when and where did you see him?

Third. Where did you see the Western World first, about the time of the collision? how long before the collision, and how far from the point of collision? where did the Western World pass you? how long before the collision, and how far from the point of collision?

Fourth. Where did you see the Illinois? how far from the point of collision, and how long before or after the collision? where did you see the Henry Lewis? where did you see the Lewis Whiteman? how far from the point of collision and how long before or after the collision did you see either the Lewis Whiteman or the Henry Lewis?

Fifth. When the Western World passed you, how near was she to you? was she between you and the right hand or Mississippi shore, or between you and the left hand or Arkansas shore? how far were you from the shore? which shore were you nearest? which way was your boat heading then? how far did the Western World go after she passed you before the two boats came together?

Sixth. What were you doing at the time of the collision? What were you doing from half an hour before the collision up to the moment of the collision? At what time did the collision occur?

Seventh. What steamboats did you see about the time of the collision? Mention all the boats you saw within an hour of the time of the collision; give their names; state where you saw them, how far from the place of collision, how long before or after the collision, how near they passed to you, and which way they were bound.

Eighth. If you say you were on a flat-boat, state which way her bow was pointed just before and at the time of the collision—up or down, or across the river. In what part of the flat-boat were you? Which way did you have to look to see the two steamboats, forward or aft, or to the larboard or to the starboard of the flat?

Ninth. Where did your boat and the H. R. W. Hill pass each other? How far from the point of collision? How long was this before or after the collision?

Tenth. How long after the collision, and how far from the point of collision, did the H. R. W. Hill make a landing? How far off were you, and what were you doing, when she made that landing? How long did she remain at that landing? Where was the Western World when the Hill made the landing?

Eleventh. How far were you from the Western World when she capsized? Were you above or below her at that time? How long was this after the collision? Where was the Hill at this time?

Twelfth. How long after the collision was it when you saw the cargo of the Western World floating around you? How far were you from the steamboats at that time?

Thirteenth. After the boats struck, what was done on the Hill? What was done on the Western World? Did you hear any bells on

either boat after they struck? If so, on which boat? How long after. How long did the two boats remain together after they struck?

Fourteenth. How long was it from the time of the collision until you lost sight of the Hill? Where was she when you saw her last? How long was it after the collision when you lost sight of the Western World? Where was she when you saw her last?

Fifteenth. Did you see a yawl, after the collision? What yawl was it? Who was in the yawl? How far was the yawl from you? How long was this after the collision?

Sixteenth. Who was it that boarded the wreck of the Western World, after the collision—any body from your boat? How long after the collision was this? How near was the wreck to your boat at the time some of you boarded it?

Seventeenth. What did you and those who were with you get from the wreck, or pick up afloat in the river? How long were you engaged in picking up things afloat from the wreck? How long did you or any of your crew remain on the wreck? State what part you took in taking things from the wreck, or in picking up things floating in the river.

Eighteenth. What became of the things taken from the wreck, or picked up afloat, by the crew of the boat or boats you were on? How many persons there were on the flats? What fell to your share, what you did with it, and what fell to Evans' share, and what he did with it?

Nineteenth. What portion of the cargo that was picked up afloat, or of the things taken from the wreck, was sold before you reached New Orleans? Where and by whom was it sold? Who got the money?

Twentieth. Had the Hill landed when you and those who were with you, began to pick up the cargo? Had she landed when a party from your boats left in a skiff to go to the wreck? Did the skiff start for the wreck as soon as you saw the cargo afloat around you? If not, state as precisely as you can, how long after you saw the cargo afloat, the skiff started for the wreck? About what hour was this?

Twenty-first. Who was it that was sued, or arrested, or had some difficulty, at New Orleans, about the things picked up from the wreck of the Western World? State all you know on this subject.

Twenty-second. At the time you first saw the cargo afloat around you, could you see both shores? How far could you see things floating in the river? Was it raining? Looking toward the steamboats, how far from your boat did you see cargo afloat in the river?

Twenty-third. How did the two boats strike? How was the Hill heading, and how was the Western World heading when they struck? What part of the two boats, and on which side of each came together?

Twenty-fourth. After the boats struck, what change did they make in their relative position?

Twenty-fifth. Was the Hill at any time, before or after the collision between you and the Arkansas shore? If so, at what time? Was the Western World at any time, before or after the collision, between you and the Arkansas shore? If so, at what time?

Twenty-sixth. Was the Hill at any time, either before or after the collision in such a position that her starboard side was presented to the Western World? If so, at what time?

R. H. MARR,
One of the proctors for claimants and respondent.

8th August, 1857.

The commissioner will please see that no one prompts the witness or makes any suggestion to him touching his answers to the interrogatories and cross-interrogatories, and that the witness does not refer to any paper or memorandum. The commissioner will propound each interrogatory and cross-interrogatory to the witness separately, and write out his answer to each in the language used by him as nearly as possible. Let the certificate show who are present at the taking of the testimony. R. H. MARR.

Circuit Court of the United States
for the Fifth Circuit, Eastern District of Louisiana.

ALEXANDER NORTON, Libellant,
vs.
The Steamboat H. R. W. HILL and owners of the same, Libellees.

I, N. Buckmaster, an alderman in and for the city of Pittsburgh and ex-officio a justice of the peace in and for the county of Alleghany, State of Pennsylvania, residing in said city and county, by virtue of a commission directed to such justice of the peace by the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, dated at New Orleans the 25th July, 1857: authorizing and requiring such justice of the peace to call and cause to come before him Westley Ray and him duly to examine, on oath, touching and concerning certain matters and things in the above-named case now pending in said court, wherein the said Norton is libellant, and the owners of the steamboat H. R. W. Hill are libellees and appellants—I, the said N. Buckmaster, do hereby certify that on this day, to wit, the 25th day of August, A. D. 1857, as justice of the peace aforesaid, I caused the said Westley Ray to come before me, who, after having been sworn by me according to law to answer truly the interrogatories hereto appended by the libellants and libellees, and who being of full age, did depose and say as follows:—

Wesley Ray, of lawful age, being by me first duly sworn on behalf of the plaintiff, deposed and said:—

1st. To the 1st interrogatory, he answers. Wesley Ray; am twenty-seven years old; I am a brickmaker by trade; work at that

in the season for that business, and in the winter season run on the river as a boat hand—either steamboat or flat-boat.

2d. To the 2d interrogatory, he answers. I witnessed a collision between the H. R. W. Hill and the Western World, in the month of December, 1852; I shipped in the fall of 1852, at Cincinnati, on a pair of flat-boats, loaded with potatoes, bound to New Orleans; the boats were lashed together; when we got down the river, at Princeton bar, on the Mississippi River, about 4 o'clock in the morning, as near as I can now remember, I was called out to oars; Henry Evans was pilot; there were two steamboats ahead, and the pilot called all hands to come out for fear of trouble; he said there was likely to be trouble, and we pulled for the Arkansas shore to keep to the outside of them.

The steamboats were from 150 to 200 yards from the Princeton bar, as I was told it was called, Princeton bar or the shore, I don't know which; whilst we were pulling out from the Mississippi shore towards the Arkansas shore, I saw these two steamboats come together; we were a little above them at the time the boats struck; they floated together after they struck for some four or five minutes close into the Miss. shore or Princeton bar, say near the shore or bar above mentioned, some 150 or 200 yards; they then parted; the Western World floated in our direction, and the Hill seemed stationary; she was close to the Miss. shore; whether she went ashore or not I cannot say; I could see the Hill's light for some twenty or thirty minutes, and she seemed stationary during all that time; after this time we lost sight of her.

The wreck of the Western World floated after us, after we had lost sight of the Hill, some three or four hours, when we lost sight of her; at the time of the collision the two steamboats were coming, it seemed to me, head on; one was going down and the other was coming up the river.

3d. To the third interrogatory, he answers. I was on a pair of flat-boats loaded with potatoes, and was on the river at the time of the collision, as stated in my answer to the second interrogatory; I was on the flat-boats, and was within or about 100 yards of the steamboats at the time they struck—a little above them.

4th. To the 4th interrogatory, he answers. I can't tell anything of the positions of the steamboats only from the time I saw them, which was but some four or five minutes before they came together; as I had been called up at the time I have already mentioned; and at the time I saw them they seemed to me to be coming together head on, as I have before stated.

I heard no bell, nor other signal, that I remember, but I heard a great noise on board of the boats, and saw much confusion; the steamboats were, at the time they struck, within some 150 or 200 yards of the Miss. shore; the place of collision was nearer the Miss. shore than I was; some one hundred yards nearer, or thereabouts.

5th. To the 5th interrogatory, he answers. I saw, immediately after the collision, the steamers swing around, and floated apparently together, and so continued for four or five minutes; then the Western World turned keel up, and the cabin was floating alongside, at least that was the position, as near as I can judge, during the time she floated behind us, some hours, as I have before stated; the Hill appeared stationary during the whole time she was in sight; whether she went ashore or not I can't tell.

6th. To the sixth interrogatory, he answers. I do not remember at this time anything further that would be of advantage to the plaintiff.

1st. To the 1st cross-interrogatory, the witness answers. I have been living in the county of Alleghany County, Pennsylvania, for the last twenty years.

2d. To the 2d cross-interrogatory, he answers. I have not been at New Orleans since the winter 1852–3; I never saw the plaintiff until yesterday in the city of Pittsburg, neither at any other place.

3d. To the 3d cross-interrogatory, he answers. I saw the Western World the first time, at the time and place on the Mississippi, in the year 1852, in the manner as stated in my examination in chief, and at no other time and place; I can't state how far from the point of collision, it was so near that it is impossible for me to tell.

I don't know when the Western World passed our boats, as I was below at the time; I can't tell how long before nor at what distance from the point of collision.

4th. To the fourth cross-interrogatory, he answers. I did not see either the Illinois, the Henry Lewis, or the Lewis Whiteman at any time during that night or day.

5th. To the fifth cross-interrogatory, he answers. I can only say in answer to this, that I did not see the Western World pass our boats, I can say nothing as to how, or where, or on which side, she passed us; we were nearer the Miss. side, and about some two hundred yards from the shore when I first saw the boats, the World and Hill; our boats were quartering across towards the Arkansas shore; I can't tell how far she was from us when she passed, nor when she passed, as I have before stated.

6th. To the sixth cross-interrogatory, he answers. I was pulling on the oar at the time of the collision; half an hour before I was asleep; the collision occurred about 4½ o'clock A. M.

7th. To the seventh cross-interrogatory, he answers. I saw no other boat within an hour of the time of the collision, either before or after.

8th. To the 8th cross-interrogatory, he answers. I have already stated that our boats were quartering towards the Arkansas shore and of course going down, as flat-boats usually go in that direction; I was pulling on the starboard oar within some 30 or 40 feet of the bow of the flat-boats; I had to look to larboard and ahead.

9th. To the 9th cross-interrogatory, he answers. I passed on down

and passed the Hill a few minutes after the collision, and a short distance from the point of collision.

10th. To the 10th cross-interrogatory, he answers. I don't know whether the Hill made a landing or not, and therefore, can say nothing further as to this interrogatory.

11th. To the 11th cross-interrogatory, he answers. I should think we were distant from the Western World when she capsized, about 100 yards; we were above her; I should think it was some four minutes after the collision, perhaps more; the Hill was above us near the shore.

12th. 12th cross-interrogatory, he answers. It was ten or fifteen minutes after the collision when we discovered the cargo of the Western World floating around us, or it might be longer; I can't tell how far we were from the boats at this time.

13th. 13th cross-interrogatory, he answers. I don't know what was done on the Hill, nor do I know what was done on the World, nor did I hear any bells rung. The boats remained together about five minutes after they struck.

14th. To the 14th cross-interrogatory, he answers. It was from twenty to thirty minutes until we lost sight of the Hill, and she appeared to be at the same place I have before stated, near the Miss. shore; and when I saw the World last on that day, it was three or four hours after the collision, and the last time I saw her was the day after; she was then tied up, and men were working on her. We laid up the night of the collision, and the wreck of the World passed us during the night. When I speak of the wreck, I mean the hull.

15th. To the 15th cross-interrogatory, he answers. I saw a yawl after the collision; I believe it was the World's yawl; there were three men in it; I don't know who they were; I was close to it; this was an hour or two after the collision.

16th. To the 16th cross-interrogatory, he answers. I don't know who boarded the wreck of the World first; there were some men from our boats went on board of her, I was among the number; when we went on there were others in possession of her; this was from one to two hours after. The wreck was from our boats when we went on board about a half a mile, more or less.

17th. To the 17th cross-interrogatory, he answers. We got from the wreck some two or three comforts, and some two or three women's dresses, and some 12 or 15 hams. We picked up in the river two or three barrels of flour, 6 or 7 barrels of lard, and two or three casks of bacon—1 box of mustang liniment. We were three or four hours rowing round and picking up a barrel now and again. I think our crew were not more than a half hour on the wreck altogether. I worked as a hand on the boats, and in that capacity helped to pick up the things that were floating in the river.

18th. To the 18th cross-interrogatory, he answers. The things picked up were put on the flat-boats. There were eight or ten men

on the flat boats. The amount which fell to my share was about six dollars. I don't know what fell to Evans' share, or what he did with it. My brother paid me this money, who got it from the insurance office, as he told me.

19th. To the 19th cross-interrogatory, he answers. I don't remember that any part of the goods saved from the wreck was sold before we got to New Orleans, except some hams. I don't know who sold them—the money was given to my brother on the boat, and he gave it, with some other things which he had sold, all of which was settled at the insurance office in New Orleans, and the amount coming to me was six dollars or thereabout. There were also other articles sold by Evans, to what amount I can't tell, nor do I know who got the money, nor anything further about it.

And now, as the time having expired, to wit, 7 o'clock P. M., the further taking of testimony is continued until the 26th instant, at 9 o'clock A. M., at the same place.

N. BUCKMASTER, J. P.

25th August, 1857.

And now, 26th August, 1857, pursuant to the above adjournment, the witness, Wesley Ray, appeared at the time specified in the adjournment, and to the balance of the cross-interrogatories he answers as follows.

N. BUCKMASTER.

20th. To the 20th cross-interrogatory, he answers. I don't know whether the Hill answered or not; as I said before, the Hill seemed stationary out, whether she landed or at anchor, I could not tell, as I was going out of sight of her all the time. The skiff did not start for the wreck for some hour or more from the time we first saw the cargo floating around us. It was, I should think, between 5 and 6 o'clock when the skiff started for the wreck.

21st. To the 21st cross-interrogatory, he answers. I don't know of any one having been arrested on account of the goods picked up or taken from the wreck at New Orleans, or of any difficulty concerning it.

22d. To the 22d cross-interrogatory, he answers. At the time I saw the cargo floating around us, I can't say whether I saw both shores or not. I was not looking for that object; I don't think it was so dark but that I might have seen both sides had I looked; I could see some things floating off of us some fifty yards or more; articles of different kinds were floating round at various distances, some near, and others farther off. It was raining slightly early in the morning, and later it rained harder. The first freight we saw was close alongside of us; and more was discovered further from us in the direction of the steamboats. I can't say at what distance—75 or 100 yards, or perhaps more.

23d. To the 23d interrogatory, he answers. At the time of the collision, one of the boats was heading down, and the other was

heading up the river, and appeared pretty straight up and down the river. I can't say what parts of the boats came together when they struck. They appeared to be pretty nearly head on.

24th. To the 24th cross-interrogatory, he answers. After the boats struck, they slew round, and floated down the river together, as I have before stated.

25th. To the 25th cross-interrogatory, he answers. The Hill was at no time between us and the Arkansas shore, neither was the World, whilst I saw them.

26th. To the 26th cross-interrogatory, he answers. I cannot tell whether the Hill was in a position that her starboard side was presented to the World, either before or after the collision, as I was engaged pulling on the sweep.

his
WESLEY × RAY.
mark.

State of Pennsylvania, Alleghany County, ss.

I, N. Buckmaster, an alderman in and for the city of Pittsburgh, and ex-officio a justice of the peace in and for said county, with power to administer oaths, to take depositions, &c., do hereby certify that, by virtue of the annexed commission, on the 25 and 26 days of August, A. D. 1857, the foregoing deposition of Wesley Ray—by way of answer to interrogatories and cross-interrogatories—was taken before me. I do further certify that the same witness was duly sworn by me before the said deposition was reduced to writing; that the answers were written down by me at the time and his presence, were after so written down, carefully read over to the witness, who signed them in my presence. I also certify that the said deposition, not having been concluded on the 25, was continued until the 26, as previously noted; and further certify that, during the most of the time of taking said deposition, Alexander Norton, the libellant, was present, and that there was no one present on the part of libellees.

Witness my hand and seal this 26 day of August, A. D. 1857.

N. BUCKMASTER, [L. S.]
Ald. and Ex-officio J. P.

Alleghany County, State of Penn'a, ss.

[SEAL.] I, John Bimingham, Prothonotary of the Court of Common Pleas in and for the county of Alleghany, in the Commonwealth of Penn'a, the same being a court of record and law, do by these presents certify that N. Buckmaster, Esq., before whom the foregoing deposition was taken, and who has thereunto in his own proper handwriting subscribed his name, was at the time, and now is, an alderman in and for the city of Pittsburgh, and ex-officio an acting justice of the peace in and for said county, duly commissioned and sworn and authorized by law to take acknowledgments, administer oaths, &c., to all whose acts as such due faith and credit

are and of right ought to be given throughout the United States and elsewhere.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Pittsburgh, in the said county, this 4th day of September, in the year of our Lord one thousand eight hundred and fifty-seven, and of the sovereignty and independence of the United States of America the 82. JOHN BIMINGHAM,
Prothonotary.

Alleghany County, ss.

I, William B. McClure, President Judge of the Court of Common Pleas for said county, certify that John Bimingham, by whom the above attestation was made, was, at the date thereof, prothonotary of said court duly qualified, and the said attestation is in due form of law, and made by the proper officer.

Witness my hand and seal the 4th day of September, A. D. 1857.
W. B. McCLURE, [SEAL.]

Alleghany County, ss.

[SEAL.] I, John Bimingham, Prothonotary of the Court of Common Pleas for said county, certify that Hon. William B. McClure, Esq., by whom the above certificate was given, and whose name is thereto subscribed in his own proper handwriting, was at the date thereof President Judge of the said court, duly commissioned and sworn and acting.

In witness whereof I have hereunto set my hand and affixed the seal of said court the 4th day of September, A. D. 1857.
JOHN BIMINGHAM,
Prothonotary.

Claimants' Evidence.

Filed and opened by consent 28 March, 1857.

Deposition of John D. Haynes et als.

District Court of the United States holding sessions at New Orleans, in and for the Eastern District of Louisiana.

To the Mayor of Aurora, Indiana, or to any judge or justice of the peace at Aurora, Indiana:—

Know ye, that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you John D. Haynes and others, referred to in the annexed interrogatories, and them duly examine on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein Alexander Norton, owner of the steamer Western World, is libellant, and the owners of the steamers H. R. W. Hill are claimants, and the same examinations, so taken and reduced to writing, you certify under your hand and

seal, and send inclosed to this court without delay, to be read in evidence on the trial of said cause; and send also this writ.

Witness the Honorable Theo. H. McCaleb, Judge of the District Court of the United States at the city of New Orleans, this second day of February, Anno Domini 1857, and the 81st year of the independence of the United States of America.

[SEAL.]

N. R. JENNINGS, Clerk.
By ROB'T M. LUSHER, D'y Clerk.

U. S. District Court, in Admiralty, at New Orleans.

ALEXANDER NORTON
vs.
Steamboat H. R. W. HILL.

Interrogatories to be propounded to John D. Haynes, and others, residing at or near Aurora, in the State of Indiana, witnesses for claimants in the above entitled cause.

First. State your age, residence, and occupation.

Second. State whether or not you were ever acquainted with a man named Henry Evans, a flat-boat pilot, who lately hailed from Cincinnati, in the State of Ohio. If so, state when and where you knew him, where he then lived, how long you knew him, and your means of knowing him.

Third. What was the character and social position of Henry Evans?

Fourth. What was his character as a man of truth and veracity?

Fifth. From your knowledge of Henry Evans's character and social position, would you or would you not believe him on oath?

Sixth. Was or was not the Henry Evans of whom you have testified, engaged in the business of piloting flat-boats down the Ohio and Mississippi Rivers to New Orleans, in the fall and winter of 1852? Was or was not that his regular occupation?

LOGAN HUNTON & R. R. MARR,
Proctors for Claimants.

Commission in this case may issue from the District Court, without affidavit, addressed to the mayor of Aurora, Indiana, or to any judge or justice of the peace at Aurora, Indiana. No objection based upon the want of authority in the District Court to issue the commission, or the want of an affidavit to obtain the commission, or the failure to name specially the commissioner, will be urged in the Circuit Court, and no proof of the official capacity of the commissioner will be required beyond his signature in his official capacity, and seal, if he have one.

The right to object to the taking of the testimony after the hearing in the District Court, is reserved. P. E. BONFORD,
Proctor for Libellant.

First cross-interrogatory. Have you ever heard Henry Evans's

character for truth and veracity spoken of? If yea, when and where, and by whom?

2d cross-interrogatory. How long have you known the said Evans? What is his apparent age? Describe his person.

3d cross-interrogatory. Have you ever had any controversy or difficulty of any description whatsoever with the said Evans? Are you on friendly terms with him?

4th cross-interrogatory. Did you ever hear any person say he would not believe Evans under oath? If yea, who and when?

P. E. BONFORD, Proctor for Libellant.

State of Indiana, Dearborn County, City of Aurora.

Depositions of witnesses, taken at Aurora, Dearborn County, in the State of Indiana, pursuant to the annexed commission, issued from the hon. the District Court of the United States, holding sessions at New Orleans, in and for the Eastern District of Louisiana, before me, Washington Stark, mayor of the city of Aurora, in said commission mentioned, to be read in evidence in a certain cause in said court lately pending, in admiralty, between Alex. Norton, libellant, and Thomas H. Newell, and others, owners of the st'm H. R. W. Hill claimants, in which an appeal has been taken by said claimants, returnable in the Circuit Court of the United States, in and for the Eastern District of Louisiana, at the April Term of said court, to be held at the city of New Orleans, in the year 1857, on the part of claimants.

And on the 23d day of February, 1857, first came John D. Haynes, personally known to me, who having been first duly sworn on the Holy Evangelist to speak the truth, the whole truth and nothing but the truth touching the interrogatories to him propounded in said cause, deposes and says:—

To the 1st interrogatory, he answers. I am forty-four years of age; I reside in the city of Aurora, and am by occupation an attorney at law.

To the 2d interrogatory, he answers. I became acquainted with a flat-boat pilot by the name of Henry Evans, in the year 1848 or 1849; at that time he lived in the city of Aurora, when he was not employed on the river; I met him often when he was at home, though I had no intimate personal acquaintance with him, and my principal means of knowing his character was from reputation.

His answer to 3d interrogatory. When I first became acquainted with Henry Evans, he was not a man of high social position or of blameless reputation, and subsequently, and I think, including a period of from 1852 to 1856, judging from the reputation he bore in the estimation of river men and others, that I heard speak of him, he was a man of bad character.

His answer to 4th interrogatory. I don't know what his character was for truth and veracity.

His answer to 5th interrogatory. From my knowledge of the

character of Henry Evans I should not consider his sworn statement entitled to belief.

His answer to 6th interrogatory. The Henry Evans of whom I have testified was engaged in piloting flat-boats down the Ohio and Mississippi Rivers to New Orleans during the fall and winter of 1852, and that was his occupation.

His answer to cross-interrogatory No. one. I have now, as I recollect, heard the character of Henry Evans for truth and veracity spoken of.

His answer to cross-interrogatory No. two. I knew Henry Evans from 1848 until 1856, his age I suppose to be about thirty years; he was a man about five feet six to eight inches in height, of erect form, florid complexion, with dark eyes and hair.

His answer to 3d interrogatory. I never had any difficulty whatever with Henry Evans.

His answer to 4th cross-interrogatory. I never heard any person say that they would not believe Henry Evans on oath.

JOHN D. HAYNES.

Sworn to and subscribed before me at my office in the city of Aurora, on the 23d day of February, 1857, for the purpose in the caption mentioned. WASHINGTON STARK,
Mayor.

And afterwards, on the same day, to wit, the 23d day of February, 1857, came John Turner, also a witness in said cause, and also personally known to me, who having been first duly sworn upon the Holy Evangelists, to speak the truth, the whole truth, and nothing but the truth, touching the interrogatories to him propounded in said cause, deposes and says:—

To the first interrogatory, he answers. I am thirty years of age. I reside in Manchester, Dearborn County, Indiana, and about seven and one-half miles from the city of Aurora. My occupation is at this time that of a farmer, but I formerly followed the business of flat-boating on the Ohio and Mississippi Rivers.

His answer to second interrogatory. I knew a man by the name of Henry Evans seven or eight years ago, and have known him personally and by reputation from that time up to the time of his death; he followed the business of piloting flat-boats from Cincinnati, Lawrenceburgh, Aurora, and other points on the Ohio River, to New Orleans. When I first knew him, he made his home, when he was not employed on the river, either at Aurora or in the vicinity of that place, but after he left Aurora, I do not know where he made his home when he was not engaged in piloting flat-boats. My means of knowing Henry Evans was the result of a personal acquaintance with him as a river man, being myself employed in that business, and from hearing him frequently spoken of by river men and others who knew him.

His answer to third interrogatory. Henry Evans was a man of bad reputation and of low social position; he had the reputation of being a wild, reckless young man, addicted to habits of gross immorality.

His answer to 4th interrogatory. Henry Evans did not bear the reputation of a man of truth and veracity, but, on the contrary, was esteemed a reckless and unreliable man.

His answer to 5th interrogatory. From my knowledge of Henry Evans' character and social position, I would not rely upon his statements made under oath.

His answer to 6th interrogatory. The Henry Evans of whom I have testified was engaged in the business of piloting flat-boats down the Ohio and Mississippi Rivers to New Orleans in the fall and winter of 1852, and that was his regular occupation.

His answer to cross-interrogatory No. one. I have known Henry Evans for seven or eight years, and have often heard, not only heard his character for truth and veracity, but his general character, unfavorably spoken of, but could not, at this time, refer to the time, persons, or place where such conversations occurred, or such statements were made.

His answer to 2d cross-interrogatory. I have known Henry Evans for seven or eight years; he was rather a small man, about five and a half feet in height, with dark eyes and hair, when in health had a full, red face.

His answer to 3d cross-interrogatory. I never had any difficulty whatever with Henry Evans, and was always on friendly terms with him.

His answer to 4th cross-interrogatory. I never heard any person say that they would not believe Henry Evans under oath, that I now remember.

his
JOHN + TURNER.
mark

Sworn to and subscribed before me, by making his mark, the witness not knowing how to write, and at my office, in said city of Aurora, on the 23d day of February, 1857, for the purpose in the caption mentioned.

WASHINGTON STARK, Mayor.

Adjourned until to-morrow, the 24th day of February, 1857, at nine o'clock A. M., because of the non-attendance of witnesses.

Met pursuant to adjournment, on the 24th day of February, 1857, at 10 o'clock A. M., at the city of Aurora, Indiana, when and where also came and appeared Israel Phalin, personally known to me, also a witness for claimant, who being first duly sworn on the Holy Evangelists to speak the truth, the whole truth, and nothing but the truth, touching the interrogatories to him propounded in said court, deposes and says:—

His answer to first interrogatory. I am forty-four years of age; I reside in the city of Aurora, and follow the occupation of a grocery merchant.

His answer to 2d interrogatory. I know a man by the name of Henry Evans, a flat-boat pilot; I became acquainted with him in the year 1849; he then lived in the city of Aurora; I knew him from the year 1849 up to the year 1853 or 1854, after which he removed from the city of Aurora, and only visited the place occasionally; my means of knowing him consisted of a personal acquaintance with him, and from hearing others express their opinions of him.

His answer to third interrogatory. When I first became acquainted with Henry Evans, he had the reputation of being a wild and immoral young man, of unsteady and discreditable habits, and afterwards, from 1852 up to 1856, he had the reputation of a bad and dishonest man.

His answer to 4th interrogatory. Judging from the expression of public opinion, Henry Evans was not a man of good character for truth and veracity.

His answer to 5th interrogatory. Judging of the character of Henry Evans from his public reputation, I should be unwilling to have him swear against me.

His answer to 6th interrogatory. The Henry Evans of whom I have testified was engaged in piloting flat-boats down the Ohio and Mississippi Rivers, in the fall and winter of 1852, and that was his regular occupation.

His answer to first cross-interrogatory. I do not know that I have ever heard the character of Henry Evans for truth and veracity spoken of, either favorably or unfavorably.

His answer to second cross-interrogatory. I knew Henry Evans, either personally or by reputation, from the year 1849 up to 1856; his apparent age is about 30 years; he was about five feet six or eight inches in height, of ordinary size, with dark eyes, with full, round, red face.

His answer to third cross-interrogatory. I never had any difficulty whatever with Henry Evans.

His answer to fourth cross-interrogatory. I never heard any person say that they would not believe Henry Evans on oath.

ISRAEL PHALIN.

Subscribed and sworn to before me, at my office in said city of Aurora, on the 24th day of February, 1857, for the purpose in the caption mentioned.

WASHINGTON STARK, Mayor.

Adjourned until the 25th day of February, 1857, at 9 o'clock, A. M., because of the non-attendance of witnesses.

Met pursuant to adjournment on the 25th day of February, 1857, at 9 o'clock A. M., at the city of Aurora, Indiana. When and

where also appeared George K. Stratton, personally known to me, also a witness for claimant, who being first duly sworn on the Holy Evangelist, to speak the truth, the whole truth, and nothing but the truth, touching the interrogatories to him propounded in said cause, deposes and says:—

His answer to first interrogatory. I am thirty-one years of age; I reside in the city of Aurora, and am by occupation a merchant.

His answer to second interrogatory. I was acquainted with a flat-boat pilot by the name of Henry Evans; I think I first became acquainted with him in the year 1849 or 1850; at the time I became acquainted with him he lived in Aurora, when he was not piloting flat-boats on the river; I knew Henry Evans from the time I first became acquainted with him in 1849 or 1850, until the year 1856, since which time I have not seen him; my means of knowing Henry Evans was that of a personal acquaintance with him, from having once employed him to pilot a flat-boat from Aurora to New Orleans, in the year 1850, and of having heard him frequently spoken of by boatmen and others who knew him, and from living in Aurora where he made his home a part of the time, probably up to the fall of 1852.

His answer to 3d interrogatory. When I first became acquainted with Henry Evans I knew or heard nothing against his character, and he seemed to enjoy a tolerably fair reputation until about the year 1853, but from the year 1853 a different estimate was put upon his character by those who knew and spoke of him, and from that time forward he was not esteemed a man of good character.

His answer to 4th interrogatory. I cannot say that I ever heard anything said having special reference to the character of Henry Evans for truth and veracity.

His answer to 5th interrogatory. From the character of Henry Evans subsequent to the year 1853, I am unable to state what degree of credit I would give to his statements made under oath.

His answer to sixth interrogatory. The Henry Evans of whom I have testified was engaged in the fall and winter of 1852 in piloting flat-boats down the Ohio and Mississippi Rivers, and that was his regular occupation.

His answer to first cross-interrogatory. I never heard the character of Henry Evans spoken of as it respected his truthfulness or veracity one way or the other.

His answer to second cross-interrogatory. I have known Henry Evans since the year 1850; I should suppose him to be from 28 to 30 years of age; he was about five feet six or seven inches in height, of medium size, with dark eyes and hair, and a rather round red face.

His answers to third cross-interrogatory. I never had any difficulty whatever with Henry Evans, and never had any difficulty whatever with him.

His answer to fourth cross-interrogatory. I never heard any person say they would not believe Henry Evans on oath.

GEORGE K. STRATTON.

Subscribed and sworn to before me, at my office in the city of Aurora, this 25th day of February, 1857, for the purposes in the caption mentioned.

WASHINGTON STARK, Mayor.

And afterwards, on the day and year last aforesaid, to wit, the 25th day of February, 1857, also appeared James W. Weaver, also a witness in said cause on behalf of claimants, and personally known to me, who, having been first duly sworn on the Holy Evangelists to speak the truth, the whole truth, and nothing but the truth touching the interrogatories to him propounded in said cause, deposes and says:—

His answers to interrogatory No. 1. I am sixty-three years of age; I reside in the city of Aurora, and at this time I follow the business of a produce merchant and a shipper of produce to New Orleans.

His answers to second interrogatory. I have known a man by the name of Henry Evans ever since he was a boy, including a period of fifteen or twenty years, and knew his father before he was born; when I first knew him in his boyhood, he lived with his father in the neighborhood of Aurora; and he afterwards, when he grew up, made his home in the city of Aurora; I knew him as a flat-boat hand, and afterwards as a flat-boat pilot; he left Aurora some three or four years ago, since which time I have only saw him occasionally.

His answer to interrogatory No. Three. I never heard anything said against the character of Henry Evans, until he grew up to manhood, and afterwards, from my personal knowledge of him, I knew nothing to his prejudice; but, from the statements of river men and others who spoke of him, he afterwards became a man of reckless and bad character.

His answer to fourth interrogatory. I do not consider that Henry Evans was a man of good character for truth and veracity.

His answer to 5th interrogatory. If Henry Evans had any motive or interest to pervert the truth, I would not believe him under oath.

His answer to sixth interrogatory. The Henry Evans of whom I have testified, according to my best recollection, was engaged in piloting flat-boats down the Ohio and Mississippi Rivers in the fall and winter of 1852, and that was his regular occupation.

His answer to 1st cross-interrogatory. I have heard the character of Henry Evans for truth and veracity spoken of, but do not at this time recollect the time or place or the persons who spoke of his character in that respect.

His answer to 2d cross-interrogatory. I have known Henry Evans for fifteen or twenty years and ever since he was a boy; I should judge his age to be about thirty years; he is about five feet six or

eight inches in height, of ordinary size, with round face, reddish complexion, and dark eyes and hair.

His answer to 3d cross-interrogatory. I never had any difficulty with Henry Evans.

His answer to 4th cross-interrogatory. I never heard any body say that they would not believe Henry Evans on oath.

J. W. WEAVER.

And sworn to me at my office in the city of Aurora, this 25 day of February, 1857, for the purpose in the caption mentioned.

WASHINGTON STARK, Mayor.

Adjourned until to-morrow, the 26 day of February, 1857, at 9 o'clock A. M., by reason of the non-attendance of witnesses.

Met pursuant to adjournment on the 26 day of February, 1857, at 9 o'clock A. M., at Aurora, Indiana, when and where also came and appeared Isaac N. Cochran personally known to me, also a witness for claimants, who being first duly sworn on the Holy Evangelist to speak the truth, the whole truth, and nothing but the truth touching the interrogatories to him propounded in said cause deposes and says:—

His answer to first interrogatory. I am forty-six years of age; I reside in the city of Aurora, and am by occupation a hotel-keeper and produce dealer.

His answer to second interrogatory. I don't remember the exact time I became acquainted with Henry Evans, but I must have known him for a period of eight or ten years; I knew him at the city of Aurora, where he made his home when he was not on the river, and he frequently put up at my house in Aurora when he was not engaged in piloting flat-boats on the river; he made his home in Aurora, according to my best recollection, from eighteen hundred and forty-nine up to eighteen hundred and fifty-three, or at least to eighteen hundred and fifty-two, when he left and only visited the place occasionally afterwards, and it was during the period of his residence in Aurora that I was best acquainted with him, though I often heard him spoken of by river men and others afterwards.

His answer to 3d interrogatory. During the time Henry Evans lived in Aurora his character was somewhat exceptionable, and after he left Aurora, judging from his reputation, he was a man of bad character.

His answer to 4th interrogatory. I never heard the character of Henry Evans for truth and veracity spoken of favorably or unfavorably.

His answer to 5th interrogatory. From my knowledge of Henry Evans, judging from his reputation, I should have an unfavorable opinion of the reliability of his statements on oath.

His answer to 6th interrogatory. According to my best recollection Henry Evans was engaged in piloting flat-boats down the Ohio

and Mississippi rivers to New Orleans in the fall and winter of 1852, and that was his regular occupation.

His answer to cross-interrogatory No. one. I never heard the character of Henry Evans for truth and veracity spoken of.

His answer to second cross-interrogatory. I have known Henry Evans eight or ten years; I think he is about thirty years old; I should think him five feet six to eight inches in height, of common size, a full face, rather red complexion, with dark eyes and hair, and generally wore whiskers.

His answer to cross-interrogatory No. Three. I never had any difficulty whatever with Henry Evans.

His answer to cross-interrogatory No. Four. I never heard any person say that they would not believe Henry Evans on oath.

ISAAC N. COCHRAN.

Sworn to and subscribed before me, this 26 day of February, at my office in the city of Aurora, Indiana, for the purpose in the caption mentioned. WASHINGTON STARK,
Mayor.

Adjourned until to-morrow, the 27 day of February, 1857, at 9 o'clock A. M., because of the non-attendance of witnesses.

WASHINGTON STARK, Mayor.

Met pursuant to adjournment on the 27 day of February, 1857, at 10 o'clock A. M., at Aurora, Indiana; when and where also came James Greer, personally known to me, also a witness for claimant, who, having been first duly sworn upon the Holy Evangelists to speak the truth, the whole truth, and nothing but the truth, touching the interrogatories to him propounded in said cause, deposes and says:—

His answer to first interrogatory. I am thirty-five years of age; I reside in the city of Aurora, and my present occupation is rectifying and shipping whiskey.

His answer to second interrogatory. I know a man by the name of Henry Evans, a flat-boat pilot; I first became acquainted with him I think in 1849, at the time he made his home in the city of Aurora, when he was not piloting boats on the river, and have known him personally or by reputation ever since. I knew him from personal acquaintance, having also been a flat-boatman myself, and by the reputation he bore in the estimation of others.

His answer to third interrogatory. When I first became acquainted with Henry Evans, the only objection to his character and social position that I know of was that he was a wild, reckless, intemperate young man. But afterwards, say from 1852 up to 1856, he bore the reputation of a bad man.

His answer to fourth interrogatory. I never heard his character for truth and veracity spoken of, as I remember.

His answer to 5th interrogatory. When I first became acquainted

with Henry Evans, I should have believed him on oath; but, from the reputation he afterwards acquired, I should not consider his statements on oath worthy of much credit.

His answer to 6th interrogatory. The Henry Evans of whom I have testified was engaged in piloting flat-boats down the Ohio and Mississippi Rivers in the fall and winter of 1852, and that was his regular occupation.

His answer to 1st cross-interrogatory. I never heard the character of Henry Evans for truth and veracity spoken of.

His answer to 2d cross-interrogatory. I have known Henry Evans personally or by reputation since 1848 or 1849. I should think him about 30 years of age, of medium size, with round, full face, dark eyes and hair.

His answer to cross-interrogatory No. three. I never had any difficulty whatever with Henry Evans.

His answer to fourth cross-interrogatory. I think I never heard any person say that they would not believe Henry Evans on oath.

JAMES GREER.

Sworn and subscribed before me the 27th day of February, 1857, at the place and for the purpose in the caption mentioned.

State of Indiana, Dearborn County.

I, Washington Stark, Mayor of the city of Aurora, in and for the county and State aforesaid, do certify that the foregoing depositions of John D. Haynes, John Turner, Israel Phalin, George K. Stratton, James W. Weaver, Isaac N. Cochran, and James Greer, were taken before me at Aurora, in the State of Indiana, on the days respectively mentioned in the attestations at the foot of each of said depositions for the purpose mentioned in the caption; that each of said witnesses was sworn by me on the Holy Evangelists, before testifying, to speak the truth, the whole truth, and nothing but the truth touching the interrogatories and cross-interrogatories to him propounded in the said cause; that the answers of each of the said witnesses to said interrogatories and cross-interrogatories were correctly reduced to writing by me in presence of each of said witnesses respectively subscribed his deposition in my presence; that no alteration in any particular in the depositions of any one of said witnesses was made after signing the same, and that the foregoing pages contain correctly the answers of each and all of said witnesses to the said interrogatories and cross-interrogatories to them propounded in the cause and a correct statement of all the adjournments and other proceedings had touching the said adjournments.

In faith whereof I have hereunto signed my name and affixed the seal of said city of Aurora, the same being my official seal, at the city of Aurora, county of Dearborn, and State of Indiana, this 27th day of February, 1857.

[SEAL.]

WASHINGTON STARK,
Mayor.

Testimony of Lawson, by consent.

Filed 28th April, 1857.

ALEXANDER NORTON
vs.
St'mb't H. R. W. HILL.

U. S. Circuit Court at New Orleans.

Testimony (by consent) of John Lawson, taken at the office of R. and H. Marr, No. 13 Commercial Place, on behalf of claimants and respondent in the above entitled cause, on the 25 February, 1857, to be used on the trial of the appeal from the District Court at New Orleans.

Witness being duly sworn, desposes and says. I am engineer; have been on the river about 23 years in that business; I am also part owner of the steamboat E. Howard.

I was on board the H. R. W. Hill as a passenger at the time of the collision with the Western World, in 1852. The collision occurred some time before day, about two or three o'clock—may have been nearer day than that. I was up at the time; had gotten up a few minutes before the collision; was sitting just in the door of my state-room, on the starboard side of the Hill. Don't recollect the number of my room; think it was the third one from the bar.

I did not see the Western World until the boats came together. I saw a light before us, but did not think it was a steamboat. I observed the light all the time after I saw it, and it afterwards proved to be a boat, the Western World. The light when I first saw it was bearing quartering to us from the starboard. It continued approaching in the same direction—it did not change its direction.

I heard the signal bells, I can't say how long before the collision, both engines were backing strong, I mean of the Hill. This was at the time I first saw the light. I heard the bells of the Hill ring to stop and back, but did not then know what it was for, until I heard Capt. Newell say, "Back her strong, it is a boat." She was backed before he said that.

As well as I could see, the Western World came head on to us; her head was under our starboard guard, and came in contact with the starboard head of the Hill. This is as well as I can recollect.

The Hill was heading up the river; she had been working slow all night; it was a dark hazy sort of a night. The Hill was on the Arkansas side, and the Western World came into us from the Mississippi side. This must have been so, otherwise she could not have gotten under our starboard guard.

I did not see whether the engines of the Western World were stopped at the time of the collision or not. The Hill backed away from the Western World, then came up to her again just as quick as she could, and took the people off. I did not take any notice how they were managing the boat.

I noticed that the Western World was very deep.

From the position in which I sat, if the Western World had been between the Hill and the Arkansas shore, I could not have seen her light. I believe the Western World was in a sinking condition before she struck us. The reason I think so is this, when she turned bottom up I went on her hull, and saw one of her bottom planks that seemed to be shivered for some six or eight feet. Can't say whether it was done in the collision, but the shivered part was filled with blue mud, and it looked as if she had been into the bank or on a mud bar. I do not think any man would load a boat as deep as she was.

I did not mix with the officers of the W. World after they came on board. They sat down immediately to a game of cards. I did not know any of them.

Cross-examined.

Can't say how long ago this collision occurred. I had been up fifteen or twenty minutes, probably longer. I did not hear the big bell of the Hill ring before the collision. The guards of the Hill all around and in front were hung with canvas, so as to prevent a view of the shore. When I first saw the light, which proved to be that of the Western World, it appeared a short distance from the stem of the Hill on the starboard side, and so continued until the collision. It might have been two minutes, or more or less, from the time I first saw the light until the collision—took no particular notice. Neither before nor after the collision did I see the shore. It was ten minutes or longer after the collision before I saw the shore. When I did see the shore after the collision it was the Arkansas shore. I have no idea how close we then were to it. About two hours or more after the collision the Hill made a landing. Don't recollect where she made a landing. Don't recollect on what side of the river it was. It was below the point of collision. Don't recollect seeing any cattle on the Western World. Could see on what side of the Western World the Hill came after the collision. Don't know where the light of the Western World was which I saw before the collision, it must have been about her head. Don't recollect whether the Hill went ahead or not after she came alongside of the Western World. I am well acquainted with the officers of the Hill. Have never spoken with any of them in relation to the collision.

Re-examined.

Captain Newell was on the hurricane deck and forward, and I was nearly amidships; I was very much excited for a few minutes after collision; I left my place and went forward to see what was going on after the collision.

Mr. Bonford reserves the right to except to this on the ground that it is new testimony, taken subsequent to the decree.

P. E. BONFORD.

Sworn to and subscribed before me, February 25th, 1857.

E. M. BRADFORD, J. P.

JOHN LAWSON.

Deposition of Wm. Porterfield for Claimants.

Taken April 4th, 1857. Filed 29 April, 1857.

United States of America, Eastern District of Louisiana, City of New Orleans, ss.

Be it remembered, that on this fourth day of April, in the year of our Lord one thousand eight hundred and fifty-seven, before me, Robert M. Lusher, a commissioner, duly appointed on the 29th April, 1848, by the Circuit Court of the United States, in and for the 5th Circuit and Eastern District of Louisiana, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States;" passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789; personally appeared William Porterfield, of Vicksburg, Mississippi, now master of steamer John Strader, a person of sound mind and lawful age, witness for the claimants and respondent in a civil suit, now depending in the Circuit Court of the United States in and for the Eastern District of Louisiana, wherein Alex. Norton, owner of stmr. Western World, is libellant, and the owners of the steamer H. R. W. Hill, claimants, &c.; and the said William Porterfield, being by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say: as well in presence of R. H. Marr, Esq., for claimants, and P. E. Bonford, Esq., for libellant, Proctors—as of me, commissioner, what is hereinafter set forth in his own language.

William Porterfield, a witness for the claimants and respondent, having been duly sworn, deposes:—

For the last 23 years my residence has been, and it now is, at Vicksburg, Mississippi; for 17 years of that time (up to 17 July last) I was engaged there as owner of a wharf boat at that place.

I knew Henry Evans, a flat-boat pilot, very well, and knew him for several years previous to the collision between the Western World and the H. R. W. Hill. The first report of the collision that I received was, I think, through Henry Evans, and this was on board of the wharf-boat at Vicksburg. I don't known exactly how Evans got to my wharf boat, but I know how he got away from it. I first

met him in the passage on the wharf boat (corresponding to the gangway on an ordinary boat); he came up and shook hands with me, told me about the collision, and then remarked to me that he had some freight on his flat-boat about a ¼th of a mile above the wharf boat, lard or lard oil, I don't recollect which, which he had found afloat in the river, and he wanted to know whether I would ship it for him. I told him that as he was going down he had better take it on his boat to New Orleans, and deliver it to the underwriters, who had doubtless insured it.

Evans remained on my boat about half an hour; when he left my boat he went ashore and went up the bank. He had told me that his flat-boat was lying at the Bayou, which is the usual flat-boat landing for such boats as wish to escape the payment of wharfage fees to the corporation.

Evans said nothing to me about a sack of papers belonging to the Western World, nor anything else, except barrels of lard or lard oil. I can't say exactly what No. of barrels he mentioned, but it was somewhere in the neighborhood of twenty barrels.

Evans made the following statement to me in regard to the collision:—

He said he was from 100 to 150 yards from the boats when they came into collision; and that if ever this thing came to a suit, he would be a good witness for the Hill, for she was in her right place, coming up around the bar—Princeton bar I believe—and the Western World was floating down sideways, without steam. He also asked me, as a special favor, to take his name down and address, which I did, and subsequently handed his name and address to Capt. Newell.

Mr. Campbell, James N. Campbell, my bookkeeper, was the only person present in my office (where the conversation above related occurred) at the time of Evans's remarks to me. Mr. Campbell is now dead, and has been for over a year.

I have no interest whatever in this suit.

I am going to leave here this evening at 5 o'clock, on the John Strader, as her captain. WM. PORTERFIELD.

Cross-examined.

I recollect very distinctly the conversation with Evans; every word of it, I think. The address given me was Aurora, Ia.; I have not seen Evans since this conversation that I recollect of.

WM. PORTERFIELD.

ROBT. M. LUSHER,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Fifth Circuit and Eastern District of Louisiana.

City of New Orleans, ss.

I, Robert M. Lusher, Commissioner, duly appointed as aforesaid, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness is about to go out of this district, and that the rules of the Supreme Court of the U. States, December Term, 1851, require such taking, the deposition being proof taken under an admiralty appeal.

I further certify, that on this fourth day of April, A. D. 1857, I was attended by the proctors of both parties, at my office in this city, and by the witness, Wm. Porterfield, who is of sound mind and lawful age, and the said witness was by me carefully examined and cautioned, and sworn to testify the whole truth, and the deposition hereinbefore appearing, was by me reduced to writing in the presence of the witness, and, after carefully reading the same, he subscribed the same in my presence. I have retained the said deposition in my possession, for the purpose of sealing up, directing, and forwarding the same, with my own hand, to the court for which the same was taken.

I further certify that I am not of counsel or attorney to either of the parties in said deposition and caption named, or in any way interested in the event of said civil cause named in the caption.

In testimony whereof, I have hereunto set my hand and seal, at New Orleans, this fourth day of April, A. D. one thousand eight hundred and fifty-seven.

[SEAL.] ROBT. M. LUSHER,
U. S. Commissioner in and for the Eastern District of La.

Depositions of L. H. Hitchcock, Jno. V. Gilbert, and Thomas Gilbert, for claimants. Taken 21st April, 1857.

Circuit Court of the United States for the Ninth Judicial Circuit, holding sessions in and for the Eastern District of Louisiana.

To Egbert A. Raworth, or any United States commissioner, or any Louisiana commissioner at Nashville, Tennessee.

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you, John V. Gilbert, Thomas Gilbert, and L. H. Hitchcock, and them duly examine on oath, touching and concerning certain matters and things, in a case now depending in said court, wherein Alexander Norton is libellant and appellee, and the owners of the steamboat H. R. W. Hill are claimants and appellants; and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 10th day of April, Anno Domini 1857, and the 81st year of the Independence of the United States of America.

[SEAL.] J. W. GURLEY, Clerk.
By A. LAVISSON, D'y Clerk.

Interrogatories.

U. S. Circuit Court, appeal from District Court, in Admiralty.

ALEX. NORTON
vs.
St. Bt. H. R. W. HILL.

Interrogatories to be propounded to John V. Gilbert, Thomas Gilbert, and L. H. Hitchcock, residing at Nashville, in the State of Tennessee, witnesses for claimants and respondent in the above entitled cause.

First. State your residence and occupation, and whether or not you were on board the H. R. W. Hill, in December, 1852, at the time of the collision with the Western World. If you were on board, in what capacity?

Second. On which side of the Hill, larboard or starboard, was your stateroom? Can you state the number, or whether your room was on the same side with the clerk's office, or on the side on which the bar was? Who occupied the same room with you?

Third. At the moment of collision, were you asleep or awake? If you felt the shock of the collision, state whether it was or was not violent? Were you dressed, or had you your clothes off? If you were awake and dressed, state how that happened.

Fourth. How long did you remain in your room before you went out? Where did you go? On which side of the Hill did you go out? State whether or not you then saw the Western World. If you did, what was then her condition? What was her position with respect to the Hill? State all you may know respecting the relative positions of the two boats at the time you first saw the Western World?

Fifth. Which shore has the Hill nearest at the time of collision? State any fact you may know going to show the position of the Hill with respect to either shore.

Sixth. How long did the Western World remain attached to the guard of the Hill? How was she released from that position? Why was she cut loose? If you know any special reason assigned by any person for the cutting loose of the Western World, state what reason, by whom, and when that reason was given.

Seventh. What efforts were made to save the passengers and crew of the Western World? By whom? How long after the collision was it when the Western World was cut loose?

Eighth. How long after the collision did you see the officers of the

Western World on the Hill? Where were they? In what part of the boat? What was their conduct? If you observed the conduct of any of the officers of the Western World, state particularly what officers; give their names, if you can, or such description by their capacity or otherwise, as you may be able to remember.

Ninth. Did you or did you not see any person drunk on the Hill, or drinking at the bar of the Hill soon after the collision? If so, how long after; and state who, distinguishing between them who were drunk, if there were any such, and those you saw drinking at the bar, if there were any such?

Tenth. Did you or did you not see any persons gambling on the Hill soon after the collision? If so, how long after? who were they? what did they play? were large or small sums staked? coin or notes? State all you may know touching drinking and gambling on the Hill, soon after the collision, who participated, and how long this state of things continued.

Eleventh. State any fact within your knowledge going to show the position of the Hill with respect to either shore, at the time; whether or not you saw either shore. If so, which and and at what time. Also, whatever you may know as to the parts of the boats respectively which came in contact and were uninjured in the collision, and your means of knowing the fact testified to by you.

Twelfth. (To Capt. Thomas Gilbert specially; all the witnesses may answer if they can.) Have you, or not, ever been engaged in the steamboat business? If so, when, where, and in what capacity?

Thirteenth. Were you, or not, on board of any steamboat, in the month of December, 1852, at the time of the collision between the Hill and the Western World? If so, on what boat, in what capacity, and where were you at the time of collision?

Fourteenth. Was, or was not, your boat in company with the Western World at any time on the trip down when she was lost? If so, where, and how often? How far above the point of collision did you see her last? When was this? How was she loaded? State all you may know respecting her condition and quantity of cargo on board at the time you saw her last, and your means of knowing what you testify to.

Fifteenth. How was your boat loaded? Was she deeper or lighter than the W. World? Did you, or did you not, compare your condition with that of the Western World when you saw her last?

Sixteenth. How was the Hill loaded on this trip up?

Seventeenth. Is there, or is there not, any difference, in point of prudence and safety, in navigating a heavily laden down stream boat, and an up stream boat with the usual up load, in a dark night? If so, state what the difference is, and explain fully what it is that makes that difference.

R. H. MARR,
Proctor for claimants.

Commission may issue in this case from the Circuit Court, without affidavit, addressed to Egbert A. Raworth, or any United States or Louisiana Commissioner, at Nashville, Tennessee. Proof of official capacity will not be required.

N. O., 28 Mar., 1857.

P. E. BONFORD,
Proctor for libellant.

Reserving exception to the right of taking this testimony after final decree in the District Court, libellant waives propounding cross-interrogatories.

P. E. BONFORD,
Proctor for libl't.

Deposition of witnesses produced, sworn and examined by virtue of the annexed commission, on the 21st day of April, in the year of our Lord 1857, at Nashville, in the county of Davidson, in the State of Tennessee, before me, Egbert A. Raworth, a Louisiana Commissioner (appointed and commissioned by the Governor thereof), named in said commission, in a certain cause now depending in the Circuit Court of the United States for the Ninth Judicial Circuit, at the city of New Orleans, in the State of Louisiana, between Alexander Norton, libellant and appellee, and the owners of the steamboat H. R. W. Hill, claimants and appellants, on the part of the latter, L. H. Hitchcock, John V. Gilbert and Thomas Gilbert being produced and sworn, answers as follows to the interrogatories propounded in this cause :—

Deposition of L. H. Hitchcock.

To the 1st interrogatory, he answers and says. That he resides in Nashville, Tennessee, and he is employed as secretary of "The Chamber of Commerce;" he was on board of the steamboat H. R. W. Hill, as a passenger, at the time of the collision with the Western World.

To the 2d interrogatory, he answers and says. That his stateroom was on the larboard side of the boat, the same side the clerk's office was on; Jno. V. Gilbert occupied the stateroom with him.

To the 3d interrogatory, he answers and says. That he was awake at the time of the collision, and had his clothes on; he felt the shock but did not get up, thinking that the boat he was on had struck a log; the reason why he had his clothes on, and in his berth, was that he was indisposed, his bowels were out of order, and required him to go out frequently, and to avoid dressing every time he laid down in his clothes.

To the 4th interrogatory he answers and says. That he did not leave his room for several minutes after the first shock; he was induced to rise from noise and confusion on the boat H. R. W. Hill and cries that the boat was sinking; he arose and went over to the starboard side of the boat near the front of the wheel-house, and

there saw another steamboat fast on to the H. R. W. Hill, with her guard hung on a stanchion on the guard of the Hill.

To the 5th interrogatory, he answers and says. That he does not remember seeing the shore at all, consequently cannot state any fact relative thereto; the night being dark and rainy.

To the 6th interrogatory, he answers and says. That the Western World remained attached to the Hill between five and fifteen minutes; she was released by some person cutting the guard of the Western World; the reason why she was cut loose from the Hill was assigned by some person, he does not remember who, that the Western World, being heavily laden, might in sinking draw the guards of the Hill under water, and probably result in the loss of both boats; he does not recollect the precise time that he heard this reason given, but is under the impression that it was immediately after the collision.

To the 7th interrogatory he answers and says. That he remembers seeing planks placed from one boat to the other, but does not know who done it; he saw persons passing from the Western World to the H. R. W. Hill, but does not know who they were; it was a very few minutes after the collision that she was cut loose from the Hill; he cannot state the precise time.

To the 8th interrogatory, he answers and says. That he saw persons that were represented to him as officers of the Western World, on the H. R. W. Hill in the social hall, some time during the night after the collision; he does not know their names, nor their respective capacities—does not remember them sufficiently to be able to describe them or either of them; he was present in the social hall with them; he recollects seeing them drinking liquor, and engaged at cards at a table on which money was exposed; he presumed they were gambling; he recollects that there was much indignity expressed by the passengers on the Hill at their conduct so soon after so frightful a disaster.

To the 9th interrogatory he answers and says. That he saw persons drinking at the bar shortly after the collision, but cannot at this time specify any person particularly.

To the 10th interrogatory he answers and says. That he saw persons playing a game called "poker" in the social hall, heard them making their bets and saw money on the table; does not remember whether it was coin or notes; don't recollect how long they continued.

To the 11th interrogatory, he answers and says. That he knows nothing.

L. H. HITCHCOCK.

Subscribed and sworn to on the day and place first aforesaid.

EGBERT A. RAWORTH,
Commissioner.

Deposition of Jno. V. Gilbert.

To the 1st interrogatory, he answers and says. That he resides in Nashville, Tennessee, and his occupation a merchant. He was on board the H. R. W. Hill at the time of the collision between her and the W. World in 1852, in the capacity of a passenger.

To the 2d interrogatory, he answers and says. That he occupied a stateroom in company with L. H. Hitchcock, on the larboard side of the boat, not far from the clerk's office, and on the same side; does not remember the number.

To the 3d interrogatory, he answers and says. That he was asleep at the time of the collision, but was partially awaken by the shock. He was undressed, and did not arise from his berth, until alarmed by noise in the cabin, and the cry of the passengers that the boat was sinking.

To the 4th interrogatory, he answers and says. That he remained in his room long enough to dress himself, which occupied from two to five minutes. He first opened his stateroom door, and looked on the larboard side. It being very dark, he could see nothing. He then shut the door, and went into the cabin, and went out forward, when he first learned to a certainty that a collision had taken place. He was attracted to the starboard bow of the H. R. W. Hill by torchlights, where he discovered another steamboat hanging to the Hill, which he learned was the Western World. He then went down to the lower deck of the Hill, and could discover that the starboard guard of the Western World was fast over a stanchion on the starboard guard of the H. R. W. Hill.

To the 5th interrogatory, he answers and says. That, of his own knowledge, he does not know which shore the boats was nearest to. The night was so dark that he could see neither shore. He understood from Capt. Newell, of the H. R. W. Hill, that they were nearest to and not far from the Arkansas shore, and that the boats were on a bar.

To the sixth interrogatory, he answers and says. That the boats H. R. W. Hill and Western World were attached from ten to fifteen minutes. The Western World was released from the Hill by cutting the guard away from the stanchion of Hill. The reason for cutting the Western World loose in the manner above mentioned, as assigned by Capt. Newell, of the Hill, to me, was that the Western World appeared to be heavily laden, and that, as soon as they passed a bar over which the boats were then passing or floating. There was danger that the Western World would go down in deep water, and, attached as she was to the Hill, the Hill might be endangered seriously, and ultimately lost; and to save his boat he felt compelled to have her detached.

To the seventh interrogatory, he answers and says. That every effort that could be possibly made by men were made by the officers and crew of the Hill to save the passengers and persons on the West-

ern World. The crew of the Hill had launched the planks of the Hill on to the Western World, so as to enable them to cross safely to the Hill, which a large number effected. The boats were attached as before mentioned from ten to fifteen minutes to the best of his recollection.

To the 8th interrogatory, he answers and says. That some time, say in about twenty minutes after the boats separated and the Western World had sunk, he saw nearly all, if not all of the officers of the Western World in the social hall of H. R. W. Hill, including the captain and one pilot; the capacities of the others he cannot remember, nor does he know their names; he noticed that the captain and one pilot, the one that was on watch at the time of the collision, was rude and boisterous, both drunk and gambling at a card-table, and conducting themselves in a very unbecoming manner, and they seemed as though they disregarded the disaster that had just befallen their boat and the lives of those who were lost on her; the other pilot that was injured by efforts in saving a lady from the Western World, communicated the fact, as to the identity of the pilot before spoken of, as being the one on duty or watch at the time of the collision.

To the ninth interrogatory, he answers and says. That he can only repeat that "the captain and one pilot of the Western World was drunk;" he saw other persons drinking freely; he cannot specify any one particularly.

To the 10th interrogatory, he answers and says. That he saw the captain and one pilot of the Western World, and others that came off of her, playing cards on the Hill; there was money on the table; he thinks there was coin and paper money too on the table; does not know as to amounts bet; and does not know what game they were playing. This state of things continued the balance of the night.

To the 11th interrogatory, he answers and says. That he knows nothing more than has been before stated.

JOHN V. GILBERT.

Subscribed and sworn to before me, at the time and place first aforesaid. EGBERT A. RAWORTH,
Commissioner.

Deposition of Thomas Gilbert.

To the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, and 11th interrogatories, he answers and says. That he knows nothing.

To the 12th interrogatory, he answers and says. That he has been for thirty years past engaged in the steamboating business, a portion of the time on the Ohio, a portion on the Cumberland and Mississippi Rivers, much the largest portion of his time was employed on the Mississippi and Cumberland, running from Nashville to New Orleans; he was the most of the time acting in the capacity of captain on steamboats.

To the 13th interrogatory, he answers and says. That he was on board the steamboat Globe at that time, and was in command of her; he and his boat were about twenty-five miles above the Hill and Western World when they came in collision.

To the 14th interrogatory, he answers and says. That his boat, the Globe, and the Western World were on their down trips and were several times in sight of each other; the Western World would occasionally stop on business, and then the Globe would pass her at her landing, and being a faster boat than the Globe, would pass her in turn; the last time he saw the Western World was the evening before the morning on which the collision with the H. R. W. Hill occurred; he considered the Western World very well loaded; her guards were in the water when he saw her last; she had a great deal of live stock on her, principally beef cattle; she had on board a large number of passengers and some large casks, but he does not know what they contained; his means of knowing what he states are, from actual observation, in passing the Western World, or she passing the Globe frequently and sometimes pretty close.

To the 15th interrogatory, he answers and says. That the two boats were loaded very much alike as regards the depth they were in the water.

To the 16th interrogatory, he answers and says. That he regarded the Hill as being rather lightly loaded.

To the 17th interrogatory, he answers and says. That his experience in steamboating has taught him that there is a great distance, in point of prudence, in managing boats descending and ascending, particularly when heavily laden, and of a dark night; he says prudence dictated to him the propriety of laying by in the after part of the night on which the collision occurred between the Hill and Western World; a steamboat can ascend a stream with a far greater degree of safety, with her usual up load, than a heavily laden one can descend. The advantage derived by an ascending boat in a dark night is that if any difficulty or danger can be seen at all, the stream is in its favor, by preventing the boat from running into danger without the aid of an engine; on the contrary, a heavy laden boat, descending the river on a dark night, risks much more, and often, if danger is seen, the current continues to force them into it when the engines have ceased to work.

THOS. GILBERT.

Sworn to and subscribed before me at the time and place first aforesaid.

EGBERT A. RAWORTH, Commissioner, &c.

State of Tennessee, County of Davidson, City of Nashville.

I, Egbert A. Raworth, a commissioner in and for the State of Tennessee, duly commissioned and authorized by the Governor of the State of Louisiana, "To take the acknowledgment and proof of

deeds and other instruments of writing to be used or recorded in said State of Louisiana, and to administer oaths and affirmations, &c.," do hereby certify that L. H. Hitchcock, John V. Gilbert, and Thomas Gilbert, the deponents, were by me severally sworn to declare the truth on the questions put to them in the cause; that the interrogatories were propounded to them, and their answers thereto taken in writing by me in their presence, and subscribed by them respectively in my presence, on the day and at the place, in that behalf first aforesaid.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal at my office, in the city of Nashville, Tennessee, this 22d day of April, A. D. 1857.

[SEAL.]

EGBERT A. RAWORTH,
Commissioner.

Deposition of Thomas B. Connolly for Claimants.

Taken 21 April, 1857, and filed 21 April, 1857.

I was on board the steamer H. R. W. Hill in December, 1852, in capacity of assistant engineer, when she came into collision with the Western World. I was on watch at the time, at the larboard engine. The starboard engine of the Hill had been backing for some time before the collision occurred. Both engines had been stopped long enough before the collision, in my opinion, to have checked her headway. The starboard bell rung first to back, both bells rung to back before the collision. When my bell rung to back, I had the cane-rod in my hand; I was about to change it from the go-ahead pin to the backing pin. I did not see the Western World until she was in a sinking condition. The stem of the Hill was split from the starboard to the larboard side. The stem band was bent from the starboard to the larboard. From the position which I occupied, I could have plainly seen the Western World had she approached us on the larboard side. I am positive the Western World struck us on the starboard side. I had been on watch but a short time when the collision occurred. The watch was from 4 o'clock A. M. till breakfast. I think we were alongside of the wreck of the Western World about 25 or 30 minutes, but I cannot be positive as to the length of time. While we lay alongside the Western World, the engineers were working at the engines (or on duty at the engines). Pretty soon after the collision (not more than two trips after, possibly only one), I ceased to be in the employ of the owners of the Hill. After leaving the Hill, I engaged in the shoe-business, at New Albany, and did not return to steamboating until about two years after. Augustus Whistler was on watch at the starboard engine at the time of the collision. On the morning after the accident, while at breakfast with some of the officers of the Hill, one of the pilots of the Western World, whose name I do not recollect, a large, red-faced man, came in; Capt. Gerard asked him where the fault was or how it occurred, and he replied that the Western World was loaded heavy, steered badly,

and that she was insured for (stating the amount, which I do not now recollect). From this conversation, I concluded that this large, red-faced man was the pilot on watch at the time of the accident. Gerard was pilot on the Hill; he was on watch at the time of the collision. I am now on the John Briggs.

THOS. B. CONNOLLEY.

Cross-examination.

Once or twice during my residence at New Albany I saw Mr. Whistler, who was engineer on the Hill when I was on her. I resided in New Albany about two years; I was then on the river again about six months, and then went on shore again; while on the river the second time I was on board the Hill once—do not recollect whether it was in this city or Memphis.

I heard the signal bells before the collision; I cannot remember now whether I heard the signal bell of the Western World or not; I recollect distinctly having heard our signal bell; the signal bell indicates the side on which the pilot intends passing; I do not recollect which signal was given on this occasion, I am not in the habit of paying much attention to such things; the signal bell rang before the engine bell of the Hill rang to stop—I think both the engine bells to stop rang about the same time; I cannot say how long it was after the ringing of the signal bell before the collision occurred, I think that the interval between the ringing of the signal bell and the collision was five, ten, or fifteen minutes—I cannot state positively the time; I think it was about ten minutes from the time of the collision until the Western World was alongside where I could see her.

Question. If the Western World had been within her length of the Hill, and coming stem on so as to strike the Hill about the aft end of her boilers, could you have seen her before the collision?

Answer. If I had been looking I could; I did not see her before the collision.

The conversation I have spoken of between Captain Gerard and the pilot of the Western World, occurred in the "Texas."

In about 15 minutes or half hour after the accident, we went in on the Mississippi shore; I do not know the position of the Hill in the river at the time of the accident; I have no recollection of having seen the larboard shore before the collision.

Direct resumed.

The first intimation I had of the danger of collision was the pilots calling to the engineer at the starboard engine through the trumpet to back her strong, this was before the larboard engine bell rang to back—probably a minute or two before the collision—it was a very short time; the starboard engine was already backing at the time this order was given.

THOS. B. CONNOLLEY.

Note.—Libellant's counsel objects to the taking of the testimony after the final decree in the United States District Court. And he reserves to this testimony all legal exceptions, except to the form of taking it; and he expressly excepts to the admission in evidence of the conversation detailed between Gerard and the pilot of the Western World.

Attest, J. W. GURLEY,
U. S. Comr. East. Dist. of Louisiana.

Present: P. E. Bonford, Esq., for libellant. Present: R. H. Marr, Esq., for claimants.

Attest, J. W. GURLEY.

Deposition of James D. Hamilton.

Taken 23d April, 1857.

Circuit Court of the United States for the Ninth Judicial Circuit, holding sessions in and for the Eastern District of Louisiana.

To any Louisiana commissioner, or any United States Commissioner at Louisville, Kentucky, know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you, James D. Hamilton, and him duly examine on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein Alexander Norton is libellant and appellee, and the owners of the stmb. H. R. W. Hill are claimants and appellant; and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this tenth day of April, Anno Domini 1857, and the eighty-first year of the independence of the United States of America.

[SEAL.] J. W. GURLEY, Clerk.
By A. LAVISSON, Dy. Clerk.

Interrogatories.

ALEX. NORTON
vs.
Stm. H. R. W. HILL.

U. S. Circuit Court. Appeal from District Court, in Admiralty.

Interrogatories to be propounded to James D. Hamilton, residing at Louisville, Kentucky, witness for claimants and respondents in the above entitled cause.

First. State your age, residence, and occupation; and how long you have followed that occupation.

Second. Where were you, and in what capacity, at the time of

and that she was insured for (stating the amount, which I do not now recollect). From this conversation, I concluded that this large, red-faced man was the pilot on watch at the time of the accident. Gerard was pilot on the Hill; he was on watch at the time of the collision. I am now on the John Briggs.

THOS. B. CONNOLLEY.

Cross-examination.

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I heard the signal bells before the collision; I cannot remember now whether I heard the signal bell of the Western World or not; I recollect distinctly having heard our signal bell; the signal bell indicates the side on which the pilot intends passing; I do not recollect which signal was given on this occasion, I am not in the habit of paying much attention to such things; the signal bell rang before the engine bell of the Hill rang to stop—I think both the engine bells to stop rang about the same time; I cannot say how long it was after the ringing of the signal bell before the collision occurred, I think that the interval between the ringing of the signal bell and the collision was five, ten, or fifteen minutes—I cannot state positively the time; I think it was about ten minutes from the time of the collision until the Western World was alongside where I could see her.

Question. If the Western World had been within her length of the Hill, and coming stem on so as to strike the Hill about the aft end of her boilers, could you have seen her before the collision?

Answer. If I had been looking I could; I did not see her before the collision.

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Direct resumed.

The first intimation I had of the danger of collision was the pilots calling to the engineer at the starboard engine through the trumpet to back her strong, this was before the larboard engine bell rang to back—probably a minute or two before the collision—it was a very short time; the starboard engine was already backing at the time this order was given.

THOS. B. CONNOLLEY.

Note.—Libellant's counsel objects to the taking of the testimony after the final decree in the United States District Court. And he reserves to this testimony all legal exceptions, except to the form of taking it; and he expressly excepts to the admission in evidence of the conversation detailed between Gerard and the pilot of the Western World.

Attest, J. W. GURLEY,
U. S. Comr. East. Dist. of Louisiana.

Present: P. E. Bonford, Esq., for libellant. Present: R. H. Marr, Esq., for claimants.

Attest, J. W. GURLEY.

Deposition of James D. Hamilton.

Taken 23d April, 1857.

Circuit Court of the United States for the Ninth Judicial Circuit, holding sessions in and for the Eastern District of Louisiana.

To any Louisiana commissioner, or any United States Commissioner at Louisville, Kentucky, know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you, James D. Hamilton, and him duly examine on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein Alexander Norton is libellant and appellee, and the owners of the stmb. H. R. W. Hill are claimants and appellant; and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this tenth day of April, Anno Domini 1857, and the eighty-first year of the independence of the United States of America.

[SEAL.] J. W. GURLEY, Clerk.
By A. LAVISSON, Dy. Clerk.

Interrogatories.

ALEX. NORTON
vs.
Stm. H. R. W. HILL.

U. S. Circuit Court. Appeal from District Court, in Admiralty.

Interrogatories to be propounded to James D. Hamilton, residing at Louisville, Kentucky, witness for claimants and respondents in the above entitled cause.

First. State your age, residence, and occupation; and how long you have followed that occupation.

Second. Where were you, and in what capacity, at the time of

the collision between the W. World and the H. R. W. Hill, in December, 1852?

Third. If you say you were on any steamboat, what boat? At what hour did you change watches? Where, in what part of the river, were you at the time you changed watches? Where was the Hill at that time? Where was the Illinois? How had your boat been running, fast or slow, during the night? How were you running at the time you changed watches?

Fourth. How long was it after you changed watches before you turned in? How long after you turned in did you hear your signal bell for meeting a descending boat? What distance about had your boat gone when you heard your signal bell? How far was your boat above the foot of Princeton bar when you heard your signal bell?

Fifth. How far is it from Johnson's on the Arkansas shore, to the foot of Princeton bar? Speak with reference to the course of the current.

Sixth. How far were you from Johnson's when you changed watches?

Seventh. How did you navigate from the foot of Princeton bar? Near which shore? Did you or did you not see the light of any flat or other boat descending the river as you navigated from the foot of the bar? If so, when and where?

Eighth. At the stage of water at the time of the collision, how would a flat-boat float from Johnson's? How near the track you run that night? How long would it take a flat to float, at that stage, from Johnson's to the middle of Princeton bar?

Ninth. If a flat-boat had met the Illinois just opposite Johnson's negro cabins, where ought it to have been when you changed watches? How far from you, or from the track you were running?

Tenth. What would have been the difference in speed between a steamboat descending the river, at about 10 to 12 miles an hour, and that of a flat-boat floating from Johnson's down, that night? What would have been the difference in the speed the Hill was making that night, and that of the flat from Johnson's down?

Eleventh. Is there or is there not any difference in point of safety and prudence in navigating a heavy down stream boat, and a boat going up with the usual up stream load in a dark night? If there is any difference, state what it is, and explain what it is that makes the difference.

R. H. MARR,
Proctor for Claimants.

Commission may issue in this case, without affidavit, from the Circuit Court, addressed to any Louisiana Commissioner, or United States Commissioner at Louisville, Kentucky. Proof of his official capacity will not be required.

N. O., 30 M'ch, 1857.

P. E. BONFORD,
Proctor for Libellant.

Reserving all exceptions to the right of taking this testimony after final decree, the libellant waives propounding cross-interrogatories.

P. E. BONFORD,
Proctor for Libellant.

Circuit Court of the United States for the Ninth Judicial Circuit, holding sessions in and for the Eastern District of Louisiana.

ALEX. NORTON, Libellant and Appellee,
and
The owners of the S. B. H. R. W. HILL,
Claimants and Appellants.

I, James I. Dozier, a "Louisiana Commissioner," residing in Louisville, Kentucky, by virtue of a commission directed to such commissioner by the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, dated at New Orleans the 10th day of April, Anno Domini, 1857, authorizing and requiring such commissioner to call and cause to come before him James D. Hamilton, and him duly to examine on oath, touching and concerning certain matters and things in the above named case now pending in said court, wherein the above Norton is libellant appellee, and the owners of the steamboat H. R. W. Hill are claimants and appellants, I, the said Dozier, do hereby certify, that on this day as commissioner aforesaid, I caused the said James D. Hamilton to come before me, who, after having been by me solemnly sworn to answer truly the interrogatories hereto appended, and filed by the claimants and appellants, and who being at full age, did depose and say as follows:—

Witness, in answer to the first interrogatory, says. I am fifty years old. I am a steamboat pilot, and have been engaged in that business for about thirty years.

In answer to the second interrogatory, he says. I was there on the night of the collision between the W. World and the H. R. W. Hill, in the year 1852 (month of December of that year), acting in the capacity of pilot on the steamer Lewis Whiteman.

In answer to the third interrogatory, he says. I have already answered the first of the 3d interrogatory. We changed watches, as well as I can remember, and as I believe at Princeton bar, about four o'clock in the morning. The place called the Princeton bar is well known to boatmen, and is on the Mississippi River about one hundred miles above Vicksburg.

Further answering witness says. That at the time of changing watches as aforesaid, the Illinois was about one mile above the Whiteman ascending the river, and the H. R. W. Hill was about one mile below; all were ascending the river. The boat I was on had been running slowly during the night. The H. R. W. Hill I would say had been running at the rate of one and one-half mile; while the Whiteman was making one mile. We were running at the change of

watches slowly, or about as we had been running through the night. These statements are all made according to the best of my recollection and belief.

In answer to the fourth interrogatory, he says. I do not think it was more than five minutes, about the time of my turning in, I heard the signal bell of our boat, showing or indicating that we were meeting a descending boat. I can't say what distance our boat had gone when I heard the signal bell. It was very dark, and I was in bed. I believe when I heard our signal bell our boat was about one mile and a half, or it may have been two miles, above the foot of Princeton bar.

In answer to the 5th interrogatory, he says. I can't tell precisely; my judgment is, however, that from Johnson's, on the Arkansas shore, to the foot of Princeton bar, is about one mile and a quarter; I speak with reference to the middle ground.

In answer to the 6th interrogatory, he says. It is my belief we were about one quarter of a mile from Johnston's when the watches were changed.

In answer to the 7th interrogatory, he says. When we first entered the channel of the bar, we are, I would state, nearest the Mississippi shore, subsequently, however, we incline to the Arkansas shore; I have no recollection that I saw any light from any boat (flat or steamboat), descending the river.

In answer to the eighth interrogatory, he says. It is my judgment that at the stage the water then was, a flat-boat, floating from Johnston's would take about the same direction we did, or if there should be any deviation, it would be inconsiderable, and I would say that a flat-boat at that stage of the water would float about four miles an hour, and it would take about twenty minutes.

In answer to the ninth interrogatory, he says. If a flat-boat had met the Illinois at the point indicated by the question, it, I think, would not have been at any great distance from our whereabouts—and, at any rate, near to the track we were running.

In answer to the tenth interrogatory, he says. If the steamboat was going at the rate of ten miles per hour, then she would go two and a half times as far in the hour as the flat-boat would go; if the steamer's headway was twelve miles an hour, she would travel three times as fast in the hour as the flat would; further answering, I state, according to my best judgment, the Hill was making about nine miles per hour, and if, as I have stated, the flat would float four miles an hour, then the Hill would run in one hour two and one-fourth times as far as the flat.

In answer to the eleventh interrogatory, he says. Yes, there is a difference in the point of safety and prudence in navigating the boats, laden as set out in the question, and voyaging one up and the other down—the up boat with the usual up stream load, and the down stream boat heavily laden—and the difference is this: that the hands on each boat, being equally skilled, those on the up stream

voyage can manage the up stream boat with much more facility, to avoid accidents, than those can manage the down stream boat, in danger, from similar accidents.

JAS. D. HAMILTON.

State of Kentucky, Jefferson County, ss.

I, James I. Dozier, a resident of the city of Louisville, State and county aforesaid, and a commissioner appointed by the Governor of the State of Louisiana, with power "to administer oaths, to take depositions, and the proof and acknowledgment of deeds and other instruments" made, taken, or acknowledged in said State of Kentucky, to be used, read, or recorded in said State of Louisiana, do hereby certify that, on this day, the foregoing deposition of Jas. D. Hamilton (by way of answers to interrogatories), was this day taken before me. I do further certify that the witness was duly sworn before he gave his deposition (answered said interrogatories), that the answers were written by me in his presence, were read to him, and all was by him subscribed in my presence.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this 23 day of April, Anno Domini 1857.

[SEAL.] J. I. DOZIER,
Commissioner, &c.

Deposition of Robert J. Jennings.

Taken 12 May, 1857.

Circuit Court of the United States for the Ninth Judicial Circuit, holding sessions in and for the Eastern District of Louisiana.

To Hume F. Hill, or to any United States, or Louisiana Commissioner at Memphis, Tennessee.

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you Capt. Jennings, and him duly examine on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein Alex. Norton is libellant and appellee, and the owners of the steamboat H. R. W. Hill are claimants and appellants; and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness, the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 10th day of April, Anno Domini 1857, and the 81st year of the Independence of the United States of America.

[SEAL.] J. W. GURLEY, Clerk.
By A. LAVISSON, Dy. Clerk.

Interrogatories.

U. S. Circuit Court, appeal from the District Court in Admiralty.

ALEX. NORTON
vs.
Steamb't H. R. W. HILL.

Interrogatories to be propounded to Captain Jennings, residing at Memphis, in the State of Tennessee, a witness for claimants and respondent, in the above entitled cause.

First. State your age, residence and occupation, and how long you have followed your present business.

Second. Were you or were you not on board the steamboat H. R. W. Hill at the time of the collision with the Western World, in December, 1852? If so, in what capacity?

Third. Where were you at the time the collision occurred? In what part of the boat? What were you doing? State all you may know about the collision; what parts of the two boats came in contact and were injured in the collision?

Fourth. Which shore was the Hill nearest to at the time of the collision? State any fact you may know tending to show which shore the Hill was nearest; also whether or not you saw either shore, and if so, which?

Fifth. When did you first see and observe Fulton, who was in command of the Western World? How long after the collision? Where was he and where were you at the time? Was or was not anything said about a hat? If so, what was said and who said it? And to whom was it said?

Sixth. Was or was not anything said about policies of insurance? Who said it? What was said? To whom was it said?

Seventh. Was or was not anything said about a safe? What was said? Who said it? To whom was it said? In your answers to interrogatories fifth, sixth and seventh, be as minute as you can, and state particulars of time with reference to the collision, whether before or after, and how long before or after.

Eighth. Did you observe the condition and conduct of the officers of the Western World at the time or soon after they came on board the Hill? If you did, state fully what you observed, with particulars as to time?

Ninth. Did you or did you not observe any body drunk on the Hill, or drinking at the bar of the Hill, soon after the collision? If so, state who, distinguishing between such as were drunk, if there were any such, and such as were drinking at the bar, if there were any such, and how long after the collision.

Tenth. Did you or did you not see any persons gambling on the Hill soon after the collision? If so, who? how long after the collision? what was played? were large or small sums staked? coin or notes? State fully all you may know relative to drinking and

gambling on the Hill soon after the collision, and the names and capacity of the persons who participated, and how long this state of things continued.

Eleventh. What efforts were made to save the lives of the passengers and crew of the Western World? by whom were they made? how long was the W. World attached to the Hill before she capsized? why was she cut loose?

Twelfth. State any fact within your knowledge going to show the position of the two boats with respect to each other at the time of the collision, and the position of the Hill with respect to the shore which she was nearest; how the Hill was running just before the collision; how she had been running during the night up to the time of the collision; whether fast or slow; where she was at dark the evening before; and what distance she had made during the night.

Thirteenth. Is there, or is there not any difference, in point of safety and prudence, in navigating a down-stream boat heavily laden, and an up-stream boat with the usual up-stream load, in a dark night? If so, what is the difference? Explain fully what it is that makes the difference.

Fourteenth. How was the Hill loaded, and how was the Western World loaded at the time of the collision? State fully whatever you may know on this subject.

R. H. MARR,
Proctor for Claimants.

Commission may issue from the Circuit Court, without affidavit, addressed to Hume F. Hill, or any United States or Louisiana commissioner, at Memphis, Tennessee. Proof of official capacity will not be required.

P. E. BONFORD,
Proctor for Libellant.

N. O., 30 March, 1857.

Reserving exceptions to the right of taking this testimony after final decree in the District Court, libellant waives propounding cross-interrogatories.

P. E. BONFORD,
Proctor for Libellant.

Depositions of a witness produced, sworn, and examined by virtue of the annexed commission, on the 12 May, A. D. 1857, at my office in the city of Memphis, in the county of Shelby, and State of Tennessee, before me, Hume F. Hill, a commissioner, &c., named in said commission, in a certain cause now depending in the Circuit Court of the United States for the Eastern District of Louisiana, between Alex. Norton, plaintiff, and the owners of the steamer H. R. W. Hill, defendants on the part of the said defendants, Robert J. Jennings, being produced and sworn, answers as follows to the interrogatories propounded in this cause:—

To the 1st interrogatory annexed to said commission, and hereto attached, he answers. I am 38 years of age; residence, Memphis,

Tennessee; my occupation steamboating; have been steamboating seven or eight years.

To the 2d interrogatory, he answers. I was on board the steamer H. R. W. Hill at the time mentioned; I was a passenger.

To the 3 interrogatory, he answers. I was lying in a berth in one of the forward staterooms at the time of the collision. The boats both struck the stem of the other. The Western World's stem was knocked out; don't think the Hill was injured much; her stem was split or cracked.

To the fourth interrogatory, he answers. The Hill was nearest to the Louisiana shore. I think she was some three hundred yards below the point on Grand Lake bend. I could see the Louisiana shore.

To the fifth interrogatory, he answers. I first saw him standing on the boiler deck of the H. R. W. Hill at the head of the steps. This was about two minutes after the collision. He was on the boiler deck of the Hill at the top of the steps. I was standing close to him. Captain Fulton called to the clerk of the Western World, who had not yet left the boat, to go into the office and get his hat, and to look in the safe and get the insurance papers of the boat.

To the 6th interrogatory he answers. Captain Fulton told the clerk of the Western World to look in the safe and get the insurance papers of the boat. This was about 4 or 5 minutes after the collision.

To the 7th interrogatory he answers. Captain Fulton told the clerk to get his hat from the office, and to look in the safe and get the insurance papers of the boat; the clerk answered that he did not have the key; Captain Fulton told him that the key was in the safe, and the safe was unlocked.

To the 8th interrogatory he answers. At the time the officers of the Western World came on board the Hill, they seemed as if they had been on a spree; some of them drank a good deal after they came on board the Hill.

To the 9th interrogatory he answers. I observed that several of the officers of the Western World were drunk; I understood that two or three of them were pilots of the Western World; I think Fulton, the captain of the Western World, was drunk.

To the 10th interrogatory he answers. I saw some of the officers of the Western World playing cards on the Hill, about half an hour after the collision; can't say that Captain Fulton played, but the other officers of the Western World composed the game; the game was draw poker; the sums were pretty large; there was some silver and gold, but most of the stakes were notes; they commenced drinking shortly after coming on board the H. R. W. Hill, say two or three minutes, and continued drinking and gambling until about 10 o'clock; the collision took place about 4 o'clock in the morning; do not know the names of the officers engaged in the game; the head

officers of the Western World were engaged in the game; do not know that the captain was engaged in the game, but think he was.

To the 11th interrogatory he answers. Thomas H. Newell, captain of the H. R. W. Hill, as soon as he saw the Western World was sinking, ran alongside of her, and made her fast to the Hill with ropes; put planks across and assisted in getting all the passengers off that could be got off, and did not leave her until she had filled with water, and was about to capsize; as soon as he cut her loose, she capsized; if she had not been cut loose at the time, she would have injured the H. R. W. Hill seriously.

To the 12th interrogatory he answers. The H. R. W. Hill was running up to the point, trailing the bar; the Western World tried to take the bar side of the Hill, which see ought not to have done; the Hill was about 300 yards below the point at Grand Lake, nearest the Louisiana shore; the Hill was running slow at the time of the collision, and had been running slow during the night; do not know where she was at dusk the evening before; do not know at this time how far she had run during the night.

To the 13th interrogatory he answers. There is a great difference, a heavily loaded down stream boat has to keep the channel; if she gets the least out of it, she is apt to run aground or injure her somehow; a heavily laden down stream boat ought not to run of a dark night, as they endanger the lives of the passengers, and are in danger of losing the boat; an up-stream boat can run very well, as they can *pitze* along with safety when a down-stream boat cannot.

To the 14th interrogatory he answers. The Hill had a fair up-stream load; the Western World was loaded very deep; the H. R. W. Hill was going up stream; the Western World going down; the Hill was a new boat, and the Western World was an old one; the pilot of the H. R. W. Hill finding that the Western World was about to strike the Hill forward of the boilers, stopped the Hill and backed on the starboard wheel, which threw the two bows of the boats together; this had to be done in order to keep the Western World from running through the boilers of the H. R. W. Hill; if it had not been done, she would have cut the Hill in two, and I think both would have been sunk.

And further this deponent saith not.

ROB'T J. JENNINGS.

I, Hume F. Hill, Commissioner for the State of Louisiana, residing in the city of Memphis, State of Tennessee, do hereby certify that Robert J. Jennings, the deponent, was by me sworn to declare the truth, on the questions put to him in the cause aforesaid, that the interrogatories were produced to him, and his answers thereto taken in writing, and subscribed by him in my presence, on the day, and at the place in that behalf first aforesaid.

HUME F. HILL, Commissioner.

U. S. Circuit Court, 5th Circuit and Eastern District of Louisiana.

Opinion.

Rec'd and filed 16th November, A. D., 1858.

Circuit Court of the United States, Eastern District of Louisiana.

ALEXANDER NORTON
vs.
Steamboat H. R. W. HILL.

This is an appeal from a decree of the District Court, in a case of collision arising on the Mississippi River, the 14th December, 1852, between the steamboats Western World and H. R. W. Hill. The libellant claims damages for the loss of the Western World and her cargo.

He alleges, that between 4 and 5 A. M., the Western World was descending the Mississippi River in the usual track, when the libellee was discovered to be ascending. That the pilot of the World warned the libellee by the signal of a single tap of the bell, that the World would pass to the right, leaving the libellee to the larboard. That the libellee answered this signal by a contradiction, and announced that she would pass to the starboard of the World.

That upon this contradiction the engines of the Western World were stopped and reversed, and her former signal was repeated. But that the libellee reiterated the signal she had before given and persisted in her course.

A collision was the consequence in which the lives of many persons (25 or 30) were sacrificed, and the Western World and her cargo lost to their owners.

The case made by the evidence of the pilots and other officers of this boat is that the Western World, at the time the Hill was first seen by the pilots, was on the Arkansas side of the river near the place of G. W. Johnson, and from two to three hundred yards distant from the shore. The Illinois, an ascending boat, met her at this point. They exchanged signals, the Western World passing outside; the Illinois going close along the shore. The proper course of the Western World at this place was to follow the channel which sets over to the Mississippi shore to a bar, known as the Princeton bar, and to continue along that bar till she reached the bend, below it on the Mississippi side.

That the Princeton bar was nearly parallel with the shore and was what is called a cut bar; that is, the water was deep, and navigation safe close to it. The Western World followed this channel, and was steered for an open place below the Princeton bar, on that side. That the Hill when first seen was at the foot of the Princeton bar, and seemed to be standing up the river on that side. The pilot of the Western World supposed she was to make a landing on the Princeton side. After the Western World had attained her position on the eastern or Mississippi shore, the pilot gave a signal that she

would pass to the starboard, leaving the Hill to larboard. This signal was crossed by the Hill. Then came the precautionary measures of stopping and backing. The former signal was renewed and again crossed, then came the collision. The libellant's case is, that the Hill left the eastern shore, was crossing the bows of the Western World, and struck her on the larboard; that the boats were about a quarter of a mile distant when the first signal was given. The answer to the libel was submitted on the oath of the captain of the Hill, who was on duty at the time, and is a claimant of that boat. His answer is, that about the time specified in the libel, while it was dark and a slight rain falling, the Hill was ascending the river with care, going round Island bar on the *Arkansas* or *western* side of the river, in the usual track of ascending vessels, keeping as close to the bar as was convenient and safe; and while thus running, the light of the Western World was discovered on the starboard bow of the Hill. That the Western World then made the signal as stated in the libel; that the signal indicated that the Western World was ignorantly or unskilfully governed, as the Hill was then in her proper place on the western shore, as near to the Arkansas bar as was safe, and that she was between the World and the place she signified a purpose to go; that orders were given to stop and ship up the engines, and a contradictory signal or warning given; that this was given under proper conditions, and when the Western World renewed her signal the Hill was backed; that the Western World came across the river and the proper track of the Hill, and so is to blame for the collision.

The pilots and other officers, and some passengers of the Hill make this case: That about 4 A. M. the Hill was at the foot of the Princeton bar on the Mississippi side; that she ran along that bar (the pilot says in sight of that bar) for some distance (perhaps one-third) to a "low place;" that upon seeing the light of a flat-boat ahead, she crossed over to the Arkansas side. (Gerard's 3d ans., Bell's 3d ans., Hill's 5th ans.)

That she straightened up and was steering for the lights of an ascending boat, and while running this course and along the Arkansas shore, they discovered the Western World coming round the point and in the channel of the river; that the Western World then made the signal of one tap of the bell, and came in nearly a direct line across the river. The pilot Gerard says: "When he was first able to discover the position of the World, she was nearly square across the river, coming towards the Hill as though she would strike her starboard." The watchman Hill says: "That at the time of the Western World's first tap of the bell, she appeared to be rounding to, and at the second tap she was square across the river or nearly so, heading directly for the Hill." The place of the collision is fixed by these witnesses as near the head of the Island No. 89, near the Arkansas shore, in the usual channel of ascending boats. Upon an examination of the statements of these witnesses, it will be

seen that the deviation with which they charge the Western World began when the first signal was made. When the Western World passed the Illinois, a short distance above the head of Island 89, she was confessedly in her right place, and the signals she exchanged with that vessel were according to the custom; and, according to the testimony of her officer, she proceeded on her voyage across to the Princeton bar, and was descending along it when she first gave the signal. They place the collision about 150 to 250 yards from it, and about the middle of the way down it.

When the Hill was first perceived by the officers of the Western World, the pilot of the Illinois, and the pilot (Evans) of the flat-boat, she was on the Mississippi or eastern side, below the Princeton bar, and her own officers concede the same fact, and that she made some part of their voyage near it.

The pilot Phillips, a man of experience, says "that in a moderately good stage of high water," "the proper course for an ascending boat" in this part of the river is "to hug or keep as closely as she can with safety the Arkansas bar, until she comes round Johnson point; should she not choose to do so, however, she may take the Princeton bar, losing thereby some distance, but once having taken that bar, she should keep around it up to its head almost or above Flournoy's point. Pilots differ as to which is the best way to run—either would be proper at that stage of water; thinks if a boat had taken either bar as her course, she should keep to it and not deviate from it except in the extremest emergency, and under no circumstances to cross over in front of descending boats."

This opinion seems to be corroborated by the answer of the claimant. That answer pleads—"the going round of the island bar," and "the running as near to the bar as was safe and proper," as "the usual track of ascending vessels" that were navigated with "great care." We may conclude then that the navigation of the Hill during a part of the time she was visible to the Western World was unusual. But the officers of the Hill allege that the crossing to the Arkansas side was complete, and that the Hill "was straightened up," "was hugging the Arkansas bar closely," at the time the Western World became visible as she came around from Johnson's point. They charge that the Western World turned off from the track she had been pursuing, to come down the Arkansas bar, near which the Hill then was. Here then is the precise question upon which the solution of this controversy depends. Did the Hill complete her crossing and adjust herself in her proper place on the western bar before the Western World passed the point at Johnson's, or was the collision the result of that crossing at an improper time?

When the Western World was at Johnson's, the circumstances were favorable for ascertaining her exact position. The point at Johnson's seems to be notorious, and there was a light on shore. An ascending boat was passing and signals were interchanged to indicate their courses. At this time the pilots of those two boats

saw the Hill, and testify as to the place where she was, and both seem to have formed the same conclusion as to the course that she had selected. The pilot (Fleming) of the Illinois says: "When I first heard of the collision after it had occurred, I supposed from the position in which I had seen the two boats that they must have come together down about the foot of the willows on the Princeton bar. The boat that I took to be the Western World I would suppose that if she had only floated down and let her wheels turn, would have been past the head of the Princeton bar." This statement is evidence, it is the opinion of a person acquainted with the locality, and indicates the time in which he supposes the two vessels might overcome the distance between them. Like all the opinions in the record on the same subject, it is to be considered with caution. He proceeds to say "that if the collision occurred at the place indicated on the part of the claimants, the Western World must have rounded to, and gone up stream to be," where she is represented to have been. And the difficulty suggested in this response of the witness presses heavily upon the defence of the claimants. That defence implies that the Hill, tho' proceeding slowly, cautiously, and against the current, was able to move for some distance along the Princeton bar, to cross to the Arkansas bar, and to move along that for a time, before the Western World was discoverable in coming around from the point near Johnson's.

The pilot of the Hill assigns as the reason for his leaving the Princeton and "sheering over towards the Arkansas bar" the discovery of the light of a flat-boat in front, or above him. The depositions of some of the persons aboard the flat-boat have been taken and their testimony throws light upon this transaction. The pilot of the boat (Evans) says: "that his flat-boat was almost 250 yards from the Princeton bar, and half way down it at the time of the collision." "That it took place one hundred yards below him, and he was a witness of it. That he heard the signal bells, and apprehended danger to his own boat, and called up the men who were asleep below. That it was about this time that the Hill came out from the Princeton bar." He says: "the Western World had passed his flat-boat and was straight in the channel. That after the collision he passed the boats near the foot of the Princeton bar to which point they had floated." If this witness is trustworthy his testimony is nearly conclusive. His boat had been floating down the stream on the Mississippi side. He had observed the course of the Hill in the bend before she reached the Princeton bar, and she was before him while running that bar. To avoid the colliding boats he had aroused his crew; he passed over the scene of the collision immediately after it took place, and witnessed the final wreck of the injured boat. Since the hearing in the District Court, three others who were on the flat-boat have been examined. These agree in the statement that they were called out in consequence of the apparent danger of a collision; that they were very near the colliding boats,

and that they passed by them shortly after its occurrence leaving them close to the eastern shore. All the witnesses concur in the statement that the boats after the collision were either moved or floated to the eastern shore, and that a portion of the cargo was found on it, a short distance below the Princeton bar. The weight of the testimony in my opinion strongly preponderates in favor of the conclusion that the collision did not take place in the manner pleaded by the claimants. This conclusion is strengthened by an examination of the map marked A B—(Thompson's). The Arkansas bar could hardly have been the destination of an ascending boat crossing from "the low place," on the Princeton bar. In looking at the relative positions of the Princeton and Arkansas bars, it is difficult to understand how the Hill should strike a point so far below the head of it, as her witnesses affirm. They affirm that they ran for some distance along it and close to it before the Western World was seen.

Nor do the appearance of the boats before and at the time of the collision, as seen from the Hill, oppose a serious difficulty to the accuracy of my conclusion. The witnesses assume as a fact that the Hill was near the Arkansas bar, and parallel or nearly so with it, and that the World being on her starboard moved towards her. But if the Hill instead of being in that position was in the act of leaving the Princeton bar and was crossing to a point above Johnson's (following the lights of an ascending boat) and the Western World followed the course that the libellant describes, many of the apparitions that are mentioned might have been presented to persons on the Hill. I do not suppose that these witnesses in every case distinguished between the effect produced by the motion of their boat and that of the World, upon the prospect before them. Supposing the Hill to have been in the act of leaving the Princeton bar and to be destined for the point at Johnson's across the river, or to a place above it, the signal of the Western World was an unfortunate one. But I do not perceive that her pilot was to blame in concluding that the Hill would maintain the accustomed track of boats ascending along that bar. I will examine more in detail the manœuvres of the boats hereafter.

It is satisfactorily established that the Western World was in a good condition; that there was no pecuniary motive existing to operate upon her officers or owners to effect her destruction at the peril of their own, or of those who had confided to their skill and care, as is insinuated in the evidence. The general character of the pilot (Fletcher) is placed by the evidence upon very high ground. His practice has been for twenty years, and some of his associates assign him the first rank in his vocation. None has controverted this estimate of his skill and conduct, except on this occasion.

There is evidence that after the calamity the officers and men of the Western World behaved rudely, boisterously, and with levity on board the H. R. W. Hill, and that some of them soon exhibited

signs of intoxication. This evidence is to be taken with some caution. I have examined it with care to see if I could affirm as the basis of my decree that the officers were incompetent from inebriety, or were reckless, or insensible to the magnitude of their responsibilities in the management of the Western World. These officers have been interrogated in reference to the police and management of that boat. There is no evidence of irregularity or excess in their statement, or in the depositions of others.

I find the officers were at their places when the collision occurred. The pilot stood firmly at the wheel until all hope of the safety of the boat was gone. The others betrayed at that time neither recklessness or indifference. The evidence excludes the possibility that the boat could have been saved, and the report of the mate upon the first examination is demonstrated by the testimony afforded by the wreck itself.

The evidence of the officers and some of the passengers of the Hill has been taken in reference to the conduct of the officers of the World, after the Western World had been abandoned. Much is said to their prejudice collectively, and of some of the individuals. I have said that this evidence is to be received with caution. A very great pecuniary and personal interest had now arisen to fix upon these officers the blame of a disaster which had occasioned a frightful sacrifice of life and property. In such cases it is usual to enlist the passengers, in the support of the vessel to which they belong, that they may inculpate the others, and exonerate those with whom they are associating. The evidence is conclusive that the Western World was not insured for her full value, and "was not well sold." That she was not an old or unmanageable boat. The engineer, Whistler, testifies that the pilot of the Hill asked the pilot Fletcher, "How in the world it happened that you came into me the way you did?"

Fletcher answered, "The (Western World) was big and heavy and hard to manage, and she was insured for twenty thousand dollars." This witness subsequently expressed the confident opinion that this pilot was *drunk* or a *fool*. A more accurate account of this conversation is probably to be found in the testimony of the mate of the Hill (Irwin), and the difference illustrates the value of this sort of evidence, and furnishes a reason for the caution with which it is to be treated.

The passenger, McNairy, closes his testimony with the emphatic and doubtlessly sincere opinion "that neither the crew nor the officers of the Hill were at all in fault in producing the collision, but the crew and officers of the World were altogether to blame, *for it seemed to him* to have been *intentional on the part of the World.*

The evidence of the conversation of a witness relative to a transaction is competent for the purpose of impairing his credibility, by showing that his accounts at different times were not consistent. But the witness must be forewarned by interrogation in respect to the conversations and to such circumstances of identity, as to bring

them distinctly to his recollection or notice. In this case this was not done, but in a few instances.

We have many statements imputed to the witnesses, on the part of the World, of which they were not interrogated. But all such testimony, as a general rule, is of a low grade. It is no uncommon thing for the party who anticipates or fears the evidence of a witness to promote conversations in order that some isolated or casual observation may be reported to the discredit of his testimony. Inferences and suspicions are engrafted so as to give more point and vigor to this premeditated detraction. In cases of collision the inquiry is what acts were done antecedently, and at the time of the collision which operated as causes to promote it. The evidence of the officers of the boats is of the highest importance, for they were the actors, and in most instances can, if they will, furnish a precise solution of the questions involved.

Unfortunately for the satisfactory administration of justice, they for the most part testify under strong feelings of bias, and sometimes under a fatal temptation to obscure the truth.

Next in importance to these is the testimony of persons connected with the management of boats, or the navigation of the river, who have had favorable opportunities for the inspection of the movements of the colliding vessels. The testimony of unprofessional persons, who make a part of the crew, or passage list of the boat, who have been aroused from a sense of security to apprehensions of danger, and who rush eagerly to the officers and crew for some explanation of the impending peril, furnishes scarcely any aid in the determination of the question, although they may have seen parts of the transaction itself. Their impressions are usually an amalgamation of what they have heard, seen, and imagined. I have examined with care all the evidence in the cause in order to ascertain how this calamity came to pass, and have referred to those passages in the evidence that have weighed with me most heavily, in settling my opinion.

The question now arises, what were the duties of the officers of the respective boats, in meeting under the circumstances. The rules "for the government of pilots" were passed in October, 1852, but did not become the law until the first of February, 1853, under the act of Congress creating the Board of Inspectors.

Their rules, however, are a digest of the usages previously existing on the Mississippi River, and I refer to them merely for a compendious statement of the usage. The following apply to the case before me. Rule 3. When steamers are about to meet each other, in narrow channels or in a fog, it shall be the duty of the pilot of the descending boat to keep the channel, and check his engine, using only sufficient steam to give her steerage, until the following signals are given and answered: it shall be the duty of the pilot of the ascending boat, so soon as the other shall be in sight and hearing, to sound his bell once if he shall wish to keep his boat to the right,

and it shall be the duty of the pilot of the descending boat to answer the same promptly by one stroke of the bell; if not answered, the pilot of the ascending boat shall strike his bell again and again at short intervals until heard and answered by the pilot of the other boat. But if the pilot of the ascending boat should wish to keep his boat to the left, he shall strike his bell twice, and it shall be the duty of the pilot of the descending boat to answer the same by two strokes of the bell, and both boats shall be steered accordingly. The first signal shall be given by the pilot of the ascending boat, and it shall be the duty of the other to answer promptly. *But in case the pilot of the ascending boat does not make the signal in proper time, the pilot of the descending boat shall make the signal,* and the other shall answer promptly. Rule 7. The signal by ringing bells shall be observed by all steamers in meeting and passing each other, whether by night or day, or whether in a narrow or wide river.

Thus the duty rested upon the ascending boat to announce her direction, and the pilot, Fletcher, seems to allude to this when he said to his associate "that the boat (Hill) is coming up the river, and he would give her a choice of sides." But the Hill made no signal; the Western World was within a few hundred yards, and for want of one from the ascending boat, her pilot exercised the right, or performed the duty of announcing her direction. It must be observed that the night was dark and misty, and that the ascending boat was more manageable than a descending one. For this reason, the rules authorize the descending boat to float upon the waters, and to impose upon the ascending steamer the duty of navigating safely. Fleming, the pilot of the Illinois, says, "It is not a usual thing for one boat on meeting another, and receiving a signal tap, to cross the signal. It is usual for the boat that gives the first signal to go the way the first signalled for. This has been the rule ever since we commenced ringing bells, and before the law required this course."

The 5th rule of the Inspectors' Records are old regulation among pilots. It is: "It shall not be lawful for an ascending boat to cross a channel when a descending boat is so near that it would be possible for a collision to ensue."

It remains to be ascertained whether there were other circumstances to be considered in fixing the blame of the collision.

Some of the witnesses express the opinion that the navigation of the river was rendered unsafe by the darkness of the night and the haziness of the atmosphere, and all the evidence shows that more than the usual caution was proper. The captain of the Western World says they were running from 10 to 15 miles an hour; one of the pilot says, from 8 to 10 miles; and the engineer estimates the rate of speed at from 10 to 12 miles. In the case of Rogers *vs.* St. Charles, 19 How., 108, a similar rate of speed, in Lake Pontchartrain, was considered to be improper, and a matter for condemnation. In the Europa, 2 L. and Eq. R., 557, it is said no rate of sailing by steamers or other vessels can be said absolutely to be dangerous, but

whether any given rate is dangerous must depend upon the circumstances of each case, as the state of the weather, locality, and other facts. That the rate of speed of from 10 to 12 miles an hour, on a dark and misty night, of a descending boat, increases the risk of collisions with other boats, and that if a less rate of speed had been employed, the collision *might* not have occurred, is to me clear. I have felt somewhat in doubt on this branch of the case. In Snow *vs.* Hill, 20 How., 543, and Goselee *vs.* Shute, 18 How., 463, the collisions resulted from the misconception of the pilots of the ascending boats in reference to the destination and course of the descending vessels. The descending vessels gave no signal or other admonition of the direction they were to take, and in either case it was supposed it was their duty to do so. But at and before the moment of the collision, the descending vessel was in her proper place in the river, and she had been visible to the ascending steamer. The principle of these cases seems to be, that the court will look to the proximate and immediate causes of the collision, and if these show a distinct departure from the rules of navigation by either boat, it will not refer to conduct evincive of fault which contributed, if at all, only remotely or contingently to the disaster.

My opinion is that the proximate causes of the collision were the attempt of the Hill to cross the river in the face of a descending boat, and the adherence to the determination to do so after its danger of the attempt was disclosed by the signal from the Western World. My opinion is that the Western World was in her proper place, was seen by those on the Hill, and they were warned of her approach and direction by an appropriate signal.

That her rapid rate of speed may have increased the danger, but that with reasonable providence, care and skill, the Hill could have avoided the catastrophe. I shall affirm the decree of the District Court.

Objection is taken in this court to the refusal of the District Court to dismiss the libel on account of a misjoinder of defendants. The defect in the libel was corrected by an amendment, with the leave of the District Court. My opinion is that it was competent to the District Court to allow the amendment, and that the order cannot be reviewed in this court. Spencer *vs.* Lapsley, 20 How. 264, Dan. Ch. Pr. 347.

It is also objected that the libellant cannot maintain a suit upon the claims of the shippers and insurers, even with their consent, or with their transfer. It cannot be denied that the insurers are subrogated, or may be so, to all the rights of the shippers, whose losses they have settled, and equity allows the insurer to sue in his own name. Garrison *vs.* Memphis Ins. Co., 19 How. 312. Quebec Fire Ins. Co. *vs.* St. Louis, 22 L. and Eq. 73.

The libellant was the owner and master of the Western World. He was responsible to the shippers, or insurers, for the safe transportation and delivery of the cargo, and to fulfil his obligation and

to secure his reward he was entitled to possession. He was a bailee with an interest, and might maintain an action at law for the loss or destruction of the goods. Crouch *vs.* London and N. Western R. R. Co., 2 Carr. & Kirw. 719. Martin *vs.* Cules, 1 M. & S. 140.

The assignability of claims like this have been sanctioned in Missouri. 20 Misso. 154.

My conclusion is that the decree of the District Court must be affirmed.

J. A. CAMPBELL,
Asso. Just. Sup. Court U. S.

Petition for Rehearing.

Filed 19 November, 1858.

U. S. Circuit Court, at New Orleans, La.

ALEXANDER NORTON, Appellee,
vs.
St'mboat H. R. W. HILL, NEWELL and others, Claimants, Appellants.

To the Hon. John A. Campbell, Associate Justice of the Supreme Court of the United States, holding sessions as Appellate Judge, at the city of New Orleans, in and for the Eastern District of Louisiana:—

Claimants and appellants in the above entitled cause respectfully ask for a rehearing.

The testimony seems to have satisfied the court that the Western World, on the night of the collision, was driven at a dangerous speed; but this is regarded as a remote cause of the collision.

The speed of the boat materially and immediately contributed to the collision, upon any hypothesis deducible from the testimony, as your petitioners are constrained to believe.

1st. Because if the collision occurred while the Hill was making the crossing from the Mississippi to the Arkansas shore, her pilot had a right to assume that the descending boat was proceeding with the cautious and slackened speed required by the character of the night; and if she had been so navigated, there would have been ample time and space for the Hill to have crossed in safety to the Arkansas side.

2d. Because when it became necessary to manœuvre the two boats in order to avoid a collision, the speed of the Western World being great, the difficulty of checking her and the delay in checking her, were correspondingly increased. If she could have been checked sooner, as she might have been, had her speed been less, the collision would not have occurred.

The testimony of several witnesses establishes the fact that the pilot of the Western World was intoxicated. This was a gross fault, which contributed directly to the collision; and which in any case would divide the responsibility.

The decree in favor of the appellee rests upon the hypothesis that the collision occurred while the Hill was making the crossing. Her pilot swears that she had already made the crossing, had straightened up with the Arkansas shore, and was running for the light of an ascending boat which showed across the point, when he perceived the lights of a descending boat coming round the point, which afterwards proved to be the Western World. This testimony is confirmed by that of several witnesses, and by facts which render it, in the estimation of claimants and respondents, your petitioners, almost impossible that the collision could have occurred elsewhere than on the Arkansas shore.

Your petitioners also show, that James W. Dyas, one of the claimants, respondents and appellants, died since this cause was argued and submitted, and that his representatives have been in no manner made parties; said Dyas died at the city of New Orleans, on or about the 23d day of August, 1858.

Wherefore, your petitioners pray that a rehearing be granted; and that the decree of the court be suspended until the representatives of the said James W. Dyas, dec'd, be made parties in his room and stead, and as in duty bound, &c.

R. H. MARR,
For claimants and appellants.

Robert H. Marr being duly sworn, deposes and says. That he was well acquainted with the late James W. Dyas, who was one of the claimants of the steamboat H. R. W. Hill, and one of the respondents and appellants in the above entitled cause; and that the said James W. Dyas died in the city of New Orleans on the 23d day of August, 1858. Affiant saw his body after his death; and was present at his burial. R. H. MARR.

Sworn to and subscribed before me this 19 Nov., 1858.
J. W. GURLEY,
U. S. Com'r.

Opinion on Petition for Rehearing.

Filed 29 November, 1858.

United States Circuit Court, November 27, 1858.

ALEXANDER NORTON
vs.
St'mboat H. R. W. HILL.

A petition for a rehearing has been submitted in this cause upon the grounds that the court has erred in its view of the evidence, and that the damages should have been apportioned, in consequence of the fault of the libellant, although the libellee might have been in fault.

My opinion on the subject has been directed in a great measure by

what I consider to be the conclusions of the Supreme Court, in deciding cases that were removed from this court, and in which the opinion of that court did not agree with the doctrines that this court had applied. I have considered the evidence with much care; it is very conflicting, and an opinion founded upon a portion of the evidence must necessarily be hostile to conclusions which have their support in another portion. I think it is a case in which men may naturally form different conclusions, and that an appeal is a very proper remedy for the party who is aggrieved. A rehearing of the case would not speed the cause to its final determination, and upon the suggestions that the decree is erroneous, I do not think I should be authorized to allow a rehearing.

It is suggested that James W. Dyas has died since the submission of the cause.

The proper remedy in such a case is that the decree should be entered nunc pro tunc, as of the date of its submission. In Sheffield *vs.* Duchess of Buckingham, the order for enrolling the decree nunc pro tunc was made in two causes, in one of which the Duke of Buckingham, who was dead, was mentioned to be plaintiff, and in the other defendant, and before the suit was revived was held to be regular.—Amb. 586, West R. 673. The same principle was determined, 1 Eq. Cas. Ab. 162.

The order of the court is that the motion for a rehearing be overruled, and that the decree of the court be entered to stand and have effect as of the day of the date of the submission of the cause of the court, the defendants to have all of the benefits, however, as if the decree had only been entered as of this date. The ground for the entry of the order nunc pro tunc is the suggestion of the death of one of the defendants.

JOHN A. CAMPBELL,
Associate Justice of the Sup. Court of the U. S.

Order on Petition for Rehearing.

U. S. Circuit Court, 5th Circuit and Eastern District of Louisana.

November term, 1858. New Orleans, Monday, 29 November, 1858, court met pursuant to adjournment. Present: Hon. Theo. H. McCaleb, District Judge. Absent: Hon. J. A. Campbell, Presiding Judge.

ALEXANDER NORTON
vs. } 2747.
Steamer H. R. W. HILL.

The following order was received from Hon. J. A. Campbell, and ordered to be recorded.

In this case a motion for a rehearing is submitted by the claimants, and the court having considered the same it is hereby overruled. And it being suggested to the court, that James W. Dyas, one of the claimants, has departed this life since the agreement and submission of the cause, and while the same was under advisement

in the hands of the court. It is ordered that the decree be entered and have the same force and effect as if it had been rendered at the date of the submission. But that this entry shall not preclude the defendants from the privilege of an appeal and supersedeas upon complying with the acts of Congress, in that behalf, 27 November, 1858.

Order making J. D. Hill a party, &c.

U. S. Circuit Court, 5th Circuit and Eastern District of Louisiana.

November term, 1858. New Orleans, Monday, 6 December, 1858, court met pursuant to adjournment. Present: Hon. Theo. H. McCaleb, District Judge. Absent: Hon. J. A. Campbell, Presiding Judge.

ALEXANDER NORTON
vs.
Steamer H. R. W. HILL. } 2747.

On motion of R. H. Marr, of counsel for claimants, and on suggesting to the court that H. R. W. Hill was one of the sureties of claimants, hath departed this life, and that James Dick Hill, his only child, heir, and universal legatee, hath accepted and is in the possession of the succession of his said father, H. R. W. Hill, dec'd. It is now ordered that said James Dick Hill be made a party to said cause, in the room and stead of his said father, H. R. W. Hill, and that his name be substitued for that of said H. R. W. Hill in all future proceedings in said cause.

Order making N. Gibson, curator, &c., a party.

U. S. Circuit Court, 5th Circuit and Eastern District of Louisiana.

November Term, 1858. New Orleans, Monday, 6th December, 1858. Court met pursuant to adjournment. Present: Hon. Theo. H. McCaleb, District Judge. Absent: Hon. J. A. Campbell, Presiding Judge.

ALEXANDER NORTON
vs.
Steamer H. R. W. HILL. } 2747.

On motion of R. H. Marr, of counsel for claimants, and on suggesting to the court that James W. Dyas, one of the claimants, has departed this life since this cause was argued and submitted, and on producing and filing satisfactory proof that Nathan Gibson of New Orleans has been appointed and hath qualified as curator of the succession of said James W. Dyas, it is now ordered by the court that the said Nathan Gibson, curator of said James W. Dyas, be made a party in the room and stead of said James W. Dyas, and that his name in that capacity be substituted for that of said James W. Dyas in all future proceedings in said cause.

Letters of Curatorship.

Filed 6th December, 1858.

The State of Louisiana, Second District Court of New Orleans.

This shall certify to all whom it may concern, that on the 3d day of December, in the year of our Lord one thousand eight hundred and fifty-eight, and the 83d of the Independence of the United States of America, an application was made to the Honorable Judge of the Second District Court of New Orleans, by Nathan Gibson, praying that he might be appointed curator of the succession of James W. Dyas, deceased; now know ye, that Nathan Gibson has been, and he is hereby appointed curator to the said succession of James W. Dyas, deceased, and that he has fulfilled all the requisites of the law.

Witness our hand and the seal of the said Second District Court, this 4th day of December, in the year of our Lord one thousand eight hundred and fifty-eight, and the 83d of the Independence of the United States. P. H. MORGAN, Judge.

[SEAL.] OCTAVE MOREL, D'y Cl'k.

Final Decree.

U. S. Circuit Court, 5th Circuit and Eastern District of Louisiana.

November Term, 1858. New Orleans, Wednesday, 17th November, 1858. Court met pursuant to adjournment. Present: Hon. Theo. H. McCaleb, District Judge. Absent: Hon. J. A. Campbell, Presiding Judge.

ALEXANDER NORTON
vs.
Steamer H. R. W. HILL. } 2747.

The following decree was received from Hon. J. A. Campbell, Presiding Judge, and ordered to be recorded:—

This cause came on to be heard at the last term of the court upon the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel. On consideration whereof, it is now ordered, adjudged, and decreed, that the decree of the District Court be affirmed, and that the libellant, Alexander Norton, do have and recover judgment against Thomas H. Newell, James W. Dyas, and Amelia Hamilton, claimants of the steamer H. R. W. Hill, and against H. R. W. Hill and Robert Dyas, the sureties, upon the stipulation in solido, and the respondent, Thomas H. Newell, for the sum of fifty-seven thousand dollars and costs of suit; and that for the recovery of fifty-two thousand five hundred dollars of said amount he be entitled to process of execution against the above-named claimants and sureties jointly and severally, their respective heirs, executors, and administrators, according to the tenor of the stipulation.

Decree entered 17th November, 1858.

J. A. CAMPBELL, Asso. Justice S. C. U. S.

Petition for Appeal.

Filed, 7th December, 1858.

To the honorable Judges of the Circuit Court of the United States, Fifth Circuit, holding sessions at the city of New Orleans, in and for the Eastern District of Louisiana.

The petition of Thomas H. Newell, Amelia Hamilton, Nathan Gibson, curator of the succession of James W. Dyas, Robert Dyas, and James Dick Hill, respectfully shows unto your honors:—

That, at the present November term of this honorable court, a certain final decree hath been rendered, affirming the decree of the District Court of the United States in and for the Eastern District of Louisiana, in the cause entitled in the said District Court, Alexander Norton, owner of the steamboat Western World *vs.* The steamboat H. R. W. Hill and Thomas Newell, Master; and this honorable court, Alexander Norton, appellee, *vs.* The steamboat H. R. W. Hill, Thomas H. Newell and others, claimants, respondents and appellants, against Thomas H. Newell, Amelia Hamilton, and James W. Dyas, claimants and owners of the said steamboat H. R. W. Hill, and against Thomas H. Newell, as master of said boat *in personam*, and against Robert Dyas and H. R. W. Hill, the sureties of said claimants in the admiralty bond and stipulation given by the said claimants for the release of the said steamboat H. R. W. Hill, libelled, in the said cause, for the sum of fifty-seven thousand dollars, and costs, in favor of Alexander Norton, libellant in the District Court, and appellee in this honorable court.

That James W. Dyas, one of the claimants, is dead, and Nathan Gibson hath been appointed his curator and made a party in his room and stead; and that H. R. W. Hill, one of the sureties in the said admiralty bond and stipulation, is also dead, and his only child, heir, and universal legatee, James Dick Hill, hath been made a party in his stead, as appears by the order of this honorable court in that behalf.

That your petitioners are advised, there is error in said final decree of this honorable court affirming the decree of the said Circuit Court to their prejudice, whereby they are aggrieved; and that they desire to take and prosecute a suspensive appeal from the said decree, to the Supreme Court of the United States, for the perusal of the said decree of this honorable court.

Wherefore, petitioners pray that a suspensive appeal be allowed them from the said final decree of this honorable court to operate as a supersedeas, returnable to the next term of the Supreme Court of the United States, to be holden at the city of Washington, on petitioners' giving bond and security, conditioned according to law, in favor of said Alexander Norton, in such sum as this honorable court may deem sufficient and may fix.

That Alexander Norton be duly cited to answer the said appeal;

and that a transcript of the record and proceedings in the said cause, duly certified and authenticated, be made up and transmitted to and be filed in the said Supreme Court, and as in duty bound, &c.

R. H. MARR, for Petitioners.

Order.

Let a suspensive appeal be granted, in this case, according to the prayer of the petition, returnable to the next term of the Supreme Court of the United States, upon the petitioners' giving bond and sufficient security, in favor of Alexander Norton, in the sum of seventy thousand dollars conditioned according to law; and let Alexander Norton be cited to appear and answer said appeal.

New Orleans, 6th December, 1858.

THOS. H. McCALEB, U. S. Judge.

Appeal Bond.

Filed 7 December, 1858.

Circuit Court of the United States at New Orleans.

ALEX. NORTON, Appellee,
vs.
St. bt. H. R. W. HILL, NEWELL & others, Claimants, Appellants.
No. 2747.

Know all men by these presents that we, Thos. H. Newell, Amelia Hamilton, and Nathan Gibson, curator of the succession of James W. Dyas, dec'd, claimants, respondents, and appellants in the above entitled cause, and Robert Dyas and James Dick Hill, only child, heir at law, and universal legatee of H. R. W. Hill, dec'd, sureties in the admiralty bond and stipulation executed by said claimants in the above entitled cause, as principals, and A. J. Dyas, R. W. Estlin, David Urquhart, and Henry T. Lonsdale, of New Orleans, as sureties, are held and firmly bound unto Alexander Norton, in the full sum of seventy thousand dollars, to be paid unto the said Norton, his certain attorneys, executors, administrators, or assigns: To which payment well and truly to be made, we hereby bind ourselves, our heir, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated at New Orleans on the seventh day of December, in the year of our Lord one thousand eight hundred and fifty-eight.

Whereas, lately at a Circuit Court of the United States, Fifth Circuit, holding sessions at the city of New Orleans, in and for the Eastern District of Louisiana, in a certain cause in said Circuit Court depending, wherein Alexander Norton, libellant, was appellee, and Thomas H. Newell, Amelia Hamilton, and James W. Dyas were claimants of the steamboat H. R. W. Hill, respondents and appellants, a certain final decree was rendered, affirming the decree of the District Court of the United States in and for the Eastern District

of Louisiana, against the said Thomas H. Newell *in personam*, as master of the steamboat H. R. W. Hill, and against the said Newell, Amelia Hamilton, and James W. Dyas, as owners and claimants of said steamboat, and against Robert Dyas and H. R. W. Hill, as sureties for said claimants in said admiralty bond and stipulation, for the sum of fifty-seven thousand dollars, exclusive of costs; and the said Newell, Amelia Hamilton, Nathan Gibson, curator of the succession of James W. Dyas, dec'd, Robert Dyas, and James Dick Hill, only child, heir at law, and universal legatee of H. R. W. Hill, now deceased, have prayed for and obtained a suspensive appeal from the said decree of the said Circuit Court, to operate as a *supersedeas*, and have filed in the clerk's office of the said Circuit Court a copy of the order granting the said appeal to reverse the said decree of said Circuit Court, and a notice thereof, and citation directed to the said Alexander Norton, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at the city of Washington the first Monday of December next, to answer said appeal.

Now, the condition of the above obligation is such that, if the above bound said Thomas H. Newell, Amelia Hamilton, Nathan Gibson, curator of the succession of James W. Dyas, dec'd; Robert Dyas, and James Dick Hill, only child, &c. of H. R. W. Hill, shall prosecute their said appeal with effect, or failing to make good their said appeal, shall pay and satisfy whatever decree may be rendered by the said Supreme Court in the said cause, together with all such costs and damages as may be decreed and awarded by the said Supreme Court against them, or any of them, and shall otherwise abide by and perform, in all respects, whatever decree may be rendered against them, or any of them, by the said Supreme Court of the United States in said cause, upon said appeal, then the above obligation to be void, else to remain in full force and virtue.

In testimony whereof the said parties have hereunto signed their names and affixed their seals, at the city of New Orleans, the day and year first above written.

T. H. NEWELL. [SEAL.]
AMELIA HAMILTON, [SEAL.]
By R. H. MARR, Proctor.
N. GIBSON, Curator of
J. W. DYAS, [SEAL.]

Signed, sealed, and delivered in presence of,
R. H. MARR, Dec'r 7, 1858.

I. D. HILL, [SEAL.]

Witness to signature of I. D. Hill,
J. N. LEA.

ROBT. DYAS, [SEAL.]
A. J. DYAS, [SEAL.]

Witness to signatures of Robt. Dyas and Alex. J. Dyas,
R. H. MARR.

R. W. ESTLIN, [SEAL.]
DAVID URQUHART, [SEAL.]
H. T. LONSDALE. [SEAL.]

In presence of
R. H. MARR.

H. T. Lonsdale, one of the sureties on the foregoing bond, being sworn, says he is worth the sum of seventy thousand dollars over and above all his debts and liabilities. H. T. LONSDALE.

Sworn to and subscribed before me this 7th December, 1858.
J. W. GURLEY, Clerk.

Circuit Court of the United States, Fifth Circuit, and Eastern District of Louisiana, Clerk's Office.

I certify that the foregoing eight hundred and fifty pages contain and form a full, true, complete, and perfect transcript of the record and proceedings, together with all the evidence adduced on the trial of the case of Alexander Norton *vs.* Steamer H. R. W. Hill and claimants, No. 2747 of the docket of the said court.

Witness my hand and the seal of said court at New Orleans, this 3d November, A. D. 1859.

[SEAL.] J. W. GURLEY, Clerk.

The United States of America, the President of the United States, to Alexander Norton, greeting. You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a petition and order of appeal filed in the clerk's office of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, wherein Thomas H. Newell, Amelia Hamilton, Nathan Gibson, curator of the succession of James W. Dyas, dec'd, Robert Dyas, and James Dick Hill, are appellants, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellants as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this eighth day of December, in the year of our Lord one thousand eight hundred and fifty-eight.

THEO. H. McCALEB, U. S. Judge.

United States Circuit Court. No. 2747.

ALEXANDER NORTON
vs.
Stmr. H. R. W. HILL & cl'm'ts. } Citation of appeal.

Marshal's Return.

Rec'd Dec. 8th, 1858, and on the same day served copy of the within citation of appeal on Alex'r Norton, in person, in the city of New Orleans, and returning this writ into court Dec. 9th, 1858.

CHAS. CATOI

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1 Error - View of Dis Ct Cal att to Mesjoinde
2 " On merits
3 " on Excep Lands to Master's Report

Supreme Court of the U. S.

No 9

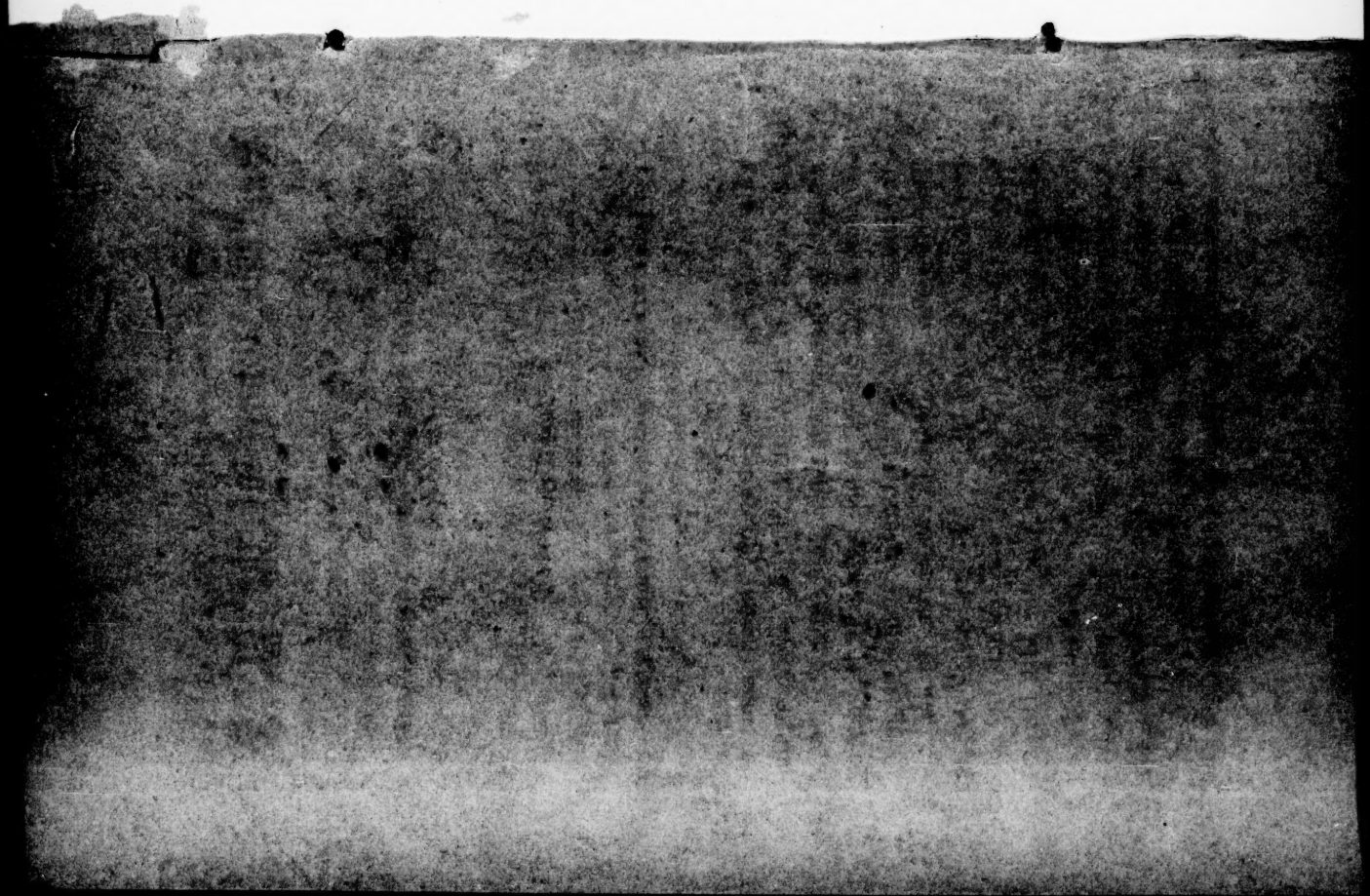
THOMAS H. NEWELL, ET AL., APPELLANTS,

VERSUS

ALEXANDER NORTON, LIBELLANT.

ARGUMENT FOR APPELLANTS.

CLARK & BRISBIN, PRINTERS.



Supreme Court of the U. S.

THOMAS H. NEWELL, ET AL., APPELLANTS,
of "H. R. W."
VERSUS

ALEXANDER NORTON, LIBELLANT.
Western World

ARGUMENT FOR APPELLANTS.

This is an Appeal by the master and claimants of the steamboat "H. R. W. Hill," and the sureties in the bond given by claimants for the release of the boat, from the decree of the Circuit Court, affirming the decree of the District Court at New Orleans against them.

The libel was for damages, which the libellant alledges he has sustained by the sinking of the steamboat "Western World," of which he was owner, by collision with the "H. R. W. Hill," on the 14th December, 1852.

The items of damage specified in the libel are: 1st: The value of the "Western World," $25,000; 2d: Cash on board, stores, freight and passage list, $7,000; 3d: Sundry claims transferred to libellant since the

collision, by the underwriters of cargo lost with the boat, amounting to $25,000, making in all $57,000.

The libel concludes with a prayer for a decree *in personam* against Newell, master and part owner, against Gerard, the pilot, and against the other owners; and *in rem* against the boat, the "H. R. W. Hill." Rec. I, 2, 3.

The "H. R. W. Hill" was seized on the 12th March, 1853, and released on claimants giving bond, in the usual form, for the sum of $52,500, her appraised value. R. 4, 5.

The claimants then excepted that there was a misjoinder: that the libel could not be maintained against the vessel, and against the owners *in personam*, or against the vessel, and against the pilot *in personam*; and they prayed that the libel be dismissed. R. 6.

The court was of opinion that the action against the owners and the pilot could not be joined with the proceeding *in rem*; "and that the libellant must be put "upon his election as to which remedy he will prosecute, "but that the libel cannot be dismissed." The libellant having elected to proceed *in rem* against the boat, and *in personam* against Newell, the master and part owner, the court ordered that the libel be dimissed as to the other owners and the pilot, and sustained against the vessel and the master. R. 6.

I am ignorant of any adjudged case or elementary principle, upon which the misjoinder of actions in the Admiralty can be cured by putting the libellant to his election. Before the adoption of the New Rules, in 1845, the proceeding *in rem* could not be joined with a suit *in personam*; and the right to unite these

distinct remedies in the same libel depends solely on the authority of these rules. Rule 14 authorises the libellant to proceed against the colliding vessel alone, or against the master and the vessel, or against the owner alone, or the master alone, *in personam.*

Before the adoption of these rules, the libellant was bound to proceed *in personam* alone, or *in rem* alone; see Citizens' Bank vs. Nantucket Steamboat Company, 2 Story, 57: and as the rules have made an innovation in the established practice in the Admiralty, by authorizing the two remedies to be blended in the same libel, in certain cases, and under certain restrictions which are specified in the rules, the libellant must comply with their textual provision, under pain of failing to bring himself and his cause of complaint within the limited power of the Court of Admiralty to hear and determine.

The boat was not seized again, and no new bond was given or required. The sureties bound themselves with reference to the libel. The contract of suretyship is *stricti juris*, and cannot be extended by implication. The undertaking of the sureties was to satisy such decree as might be rendered upon the libel filed, under which the vessel had been seized; and it is obvious that no other decree could have been rendered upon the libel, in its original form, than one of dismissal. If the libel was not authorized by law, if, in fact, as was the case, it was in direct violation of the law and the rules adopted by this court governing proceeding in the Admiralty, the seizure and detention of the boat were illegal *ab initio;* and the bond given for her release was without consideration and void.

When, therefore, the libellant elected to proceed *in rem* against the vessel, and *in personam* against the master alone, he attempted to place the sureties *in duriori casu* than that contemplated by them at the time they contracted as sureties, and to change the obligation which they had assumed, which was to satisfy such decree as might be rendered upon the libel filed, into an obligation to respond to a decree to be rendered upon a new libel, freed from the objection which made that with reference to which they had bound themselves void: an obligation to which the sureties in no manner have assented.

It seems to me that the undertaking of the sureties could not be thus changed, without their consent, at the election of the libellant: that the exception was well taken; and that the libel should have been unconditionally dismissed. Sto. Equity Pleading, sec. 271. *et seq.*

The opinion of the Circuit Court was that the defect complained of was corrected by an amendment of the libel, with the leave of the District Court; and that the order of the court allowing the amendment could not be reviewed in the Appellate Court. R. 302.

Now, it is to observed that the libellant made no application to the court for leave to amend the libel. The judgment of the court, upon the exception, was that libellant should be put upon his election; and thereupon libellant made his election. R. 6. Great latitude of discretion is properly allowed to courts of the first instance in respect to amendments, and the granting or refusing continuances, &c. Such orders

effect the parties litigant alone, and are in furtherance of the ends of justice.

But the question presented in this case is not whether the District Court had discretionary power to allow an amendment; but whether it had the power to modifiy the contract of suretyship without the assent of the sureties: and the action of the court effects the rights of third persons, who had no opportunity to be heard in opposition to the order of election. If the libel as originally filed was void, insomuch that no decree could be pronounced upon it other than one of dismissal, the seizure and detention of the boat, in virtue of a warrant issued upon that libel, were tortious; and the claimants were not legally bound to give security in order to obtain the possession of their property illegally seized and detained. The illegal seizure and detention of the boat being the only cause or motive for the giving of the bond, the contract of the sureties was without legal consideration, and imposed no obligation upon them.

In behalf of the sureties I respectfully submit that the exception to the libel ought to have been maintained; and that the refusal of the District Court to maintain it was error to their prejudice, of which they have a right to complain on an appeal to which they are parties.

The master and owners of the boat afterwards answered to the merits; and the District Court pronounced in favor of libellant. Rec. 152, 156. The commissioner to whom the cause was referred to assess the damages, allowed the whole amount demanded in the libel, including the claims assigned to libellant, since the col-

lision, by the underwriters of the cargo. Exceptions were taken to this report, which it will be necessary to consider at some length.

Three distinct questions are presented by the exception to the report, so far as these claims are concerned, to which I invite the attention of the court:

First. Can a claim for damages resulting from a collision be assigned so as to convey to the assignee the lien which may have existed in favor of the assignor, and to vest in the assignee the right to proceed in the Admiralty in his own name, for reparation for a wrong, which was not done to him, nor to his property?

Second. Can the want of jurisdiction in the Admiralty, in respect to claims stated in the libel to have been assigned to the libellant, be urged on exception to the report of the commissioner allowing those claims?

Third. Does the proof authorize the allowance of these claims?

It will be more convenient to consider this third question after the discussion upon the merits:

1. I have examined the reports and elementary treatises in vain for authority on the first question. It has been uniformly held in the District Court at New Orleans, I believe, that the assignment of a claim growing out of a maritime contract, does not vest in the assignee the lien which existed in favor of the original creditor, the assignor. Now, if a debt founded on a maritime contract cannot be transferred so as to give the Court of Admiralty jurisdiction of a libel by the

assignee, in his own name, it is fair to argue that the lien arrising in favor of a party injured by a marine tort, cannot be transferred, so as to give the Admiralty jurisdiction of a libel in the name of the assignee.

Why is it that the assignee cannot proceed in his own name? That the lien which existed in favor of the assignor is not transferred to the assignee? Plainly because, in respects to contracts, the Admiralty has no jurisdiction unless the contract which the libellant seeks to enforce is maritime. A contract may be maritime, but it would by no means follow that the assignment of that contract must also be maritime. An assignment is not, and never can be a maritime contract: it is always an ordinary civil contract.

Maritime liens are not established by the agreement of the parties, except in hypothecations of vessels, but they result from the nature and object of the contract. They are consequences attatched by law to certain contracts, and are totally independent of any agreement between the parties that such liens shall exist. Indeed, the only power the contracting parties have, respecting such liens as attach as consequences to certain contracts, is, that the creditor may waive the lien, and may by express stipulation, or by his manner of dealing, in certain cases, give credit exclusively to those who would also have been bound to him personally by the same contract which would have given rise to the lien.

If these views be correct, it seems to follow that maritime liens, except in cases of hypothecation, cannot be created by contract, but depend solely upon the maritime law which attaches them as consequences. And if

a party cannot, by express stipulation, create a maritime lien in his own favor, it seems also to follow that he cannot, by contract, vest in a third person the maritime lien which by operation of law existed in his favor.

Liens are *strictissimi juris;* and they exist only in those exceptional cases in which they are specially established by law. Maritime liens are established in favor of the mariner for his wages, the furnisher of necessary supplies, material men, &c., to the end that those who risk their capital and their labor in promoting the business of navigation and commerce may have the utmost confidence, all the assurance the law can give them, that they will be protected and justly compensated for their risk and labor; but there is no provision in the maritime code or ordinances of any nation, extending such liens to the assignees of the favored creditors. There is no reason or policy which requires that the assignee, ordinarilly a mere speculator, should be entitled to the same favor and protection as the original creditor; and it was probably not from mere omission, but designedly, in order that no countenance should be given in the Admiralty to transfers of debts resulting from maritime contracts, and that speculations in such claims should not be encouraged and stimulated, that no provision is made in favor of assignees of claims against ships.

It is to no purpose to argue that the transferree of a bill of lading may proceed in his own name in the Admiralty for injury done to the cargo on the voyage, or for non delivery at the port of destination: because, by the terms of the bill of lading, the carrier undertakes to

transport the goods, and to deliver them to any legal holder of the bill, some shipments being made to the order of the shipper others to a designated consignee "or to his assigns." The instrument being negotiable by law and by its express terms, the contract of the carrier is in favor of the legal holder, and by whatever means one becomes the legal holder there immediately accrues, in his favor an obligation on the part of the carrier as stipulated in the bill of lading.

It is one thing to say that the assignee of a bill of lading, who becomes one of the parties to the contract of affreightment the moment he becomes the owner of the bill, may proceed in his own name in the Admiralty for the injury resulting to him directly from the *non* performance of that contract by the carrier: It is another, and a very different thing to say that the transferree of a debt which, for the promotion of navigation and commerce, was secured by a maritime lien in favor of the original creditor, may claim in his own right the benefits of that lien. While the first proposition is undeniably true, there is no law which favors the conclusion that the other is true.

The case of the "Brutus," 2 Gallison, relied on for libellant, does not touch the present question.

The "Brutus" was a privateer. In the articles it was agreed that a certain portion of the shares might be assigned. Before she sailed some of the crew assigned their shares in the results of the cruise, and attached to the assignments irrevocable powers of attorney in favor of the assignees.

The case was upon a supplemental libel, filed by the

assignees and others, against certain proceeds in the registry for distribution. It is evident that any party interested may intervene *pro interesse suo*, against proceeds in the registry. No matter how he claims to be entitled to the proceeds. They are in the registry to be distributed among those who may be entitled to them; and he who is owner is entitled, and may assert and maintain his right.

The assignment by the crew of their shares in a joint enterprise, before the commencement of the voyage, made the assignees owners, as effectually as if they had been originally of the crew, or owners of the vessel. In the particular case, these assignees claimed no right which might not have been exercised by any one interested in the distribution of the proceeds in the registry; but the assignment of shares in the enterprise having been made to them anterior to the commencement of the voyage, no good reason can be shown why they should not have stood in the place of their assignors, just as if they had signed the articles, or had contributed shares in the cruiser, or money to purchase or to fit her for the expedition.

It was not properly an assignment; it was in no sense the transfer of a claim or debt; but it was a sort of contract of partnership, by which the assignees, subject to all the contingencies of the cruise, became interested, to the extent of the shares transferred to them, in the results of the enterprise: and their position, with respect to the results, was precisely what it would have been if they had purchased one-fourth or one-half of the cruiser,

after the articles were signed, but before she sailed.

Nor is the case of the "Hull of a new ship," Davies, 204, more to the point.

Knight, being about to build a ship, made an agreement with Purinton, that Purinton should advance him the money to pay for the materials and labor, and that Purinton should have a lien on the ship. The contest was between Purinton and certain privileged creditors.

Judge Ware said the agreement was a valid hypothecation of the vessel. That Purinton, having, under that agreement, advanced money to Knight which was used in paying privileged creditors, was not subrogated to the rights of those creditors, and must rely upon the lien resulting from his contract, that is, the hypothecation, which was inferior to the lien of the contesting creditors, material men and laborers.

Under the civil law system, and indeed under any system of which I have any knowledge, such an advance made to the debtor, and the use of the money by him in paying the debt, would extinguish that debt, so that subrogation could not take place, just as Judge Ware decided.

The learned Judge proceeds to say, p. 204: "The only "way in which the lien could be preserved would have "been by an assignment of the debt, unless there had "been a special agreement with Knight, the debtor, that "upon the payment the lien should be continued in his "favor."

Apart from the fact that subrogation, where it does not result by mere operation of law, depends, not upon

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Apart from the fact that subrogation, where it does not result by mere operation of law, depends, not upon

any agreement between the *debtor* and the third person who furnishes the money to pay the debt, nor yet upon any agreement between the *debtor* and the *creditor*, but solely upon the agreement between the third person and the *creditor*, who cedes to that third person all his rights against the debtor, the language used by Juge Ware, as just quoted, is a mere *dictum*, and is of no authority. There was no assignment, and no question of assignment in the case; and all that the learned Judge says touching an assignment and its effect, is hypothetical and *arguendo*.

Many persons, judges as well as counsellors, have fallen into grave errors by attaching undue importance to *dicta* thrown out *arguendo* by courts, without sufficient consideration, and upon a state of case not before them. The point before Judge Ware was, did legal subrogation result in favor of Purinton, for advances made by him to Knight, for the payment of creditors who would have been entitled to a lien: And he decided that subrogation did not take place: and it could not possibly have taken place, for two unanswerable reasons: 1st. Because the debts were paid by the debtor, and were, therefore, extinguished. 2d. Because Purinton advanced the money to Knight under an agreement which amounted to an hypothecation of the ship; so that it was not contemplated by the parties that any other relation should exist in favor of Purinton than that of a creditor, to the extent of his advances, secured by the contract of hypothecation.

What Judge Ware says respecting an assignment,

may or may not be true. He does not decide, nor has any other judge decided, so far as my researches have gone, that an assigument would preserve the maritime lien; but he expresses it as his opinion that the lien cannot be preserved in any other way. *Non constat* that an assignment would have that effect.

Fritz vs. Bull, 12 Howard, is equally inapplicable.

The libel was by Bull & Co., the owners of a flat-boat sunk in a collision; and it contains a declaration that the suit was also for the use of the underwriters of the cargo.

It was objected that the underwriters, having paid the loss anterior to the filing of the libel, Bull & Co., had no interest and could not sue. But the court said, p. 468, that the evidence did not sustain the objection; for the policies were on the cargo, and nothing had been paid on account of the boat which was lost. All the parties named in the libel had an interest: the underwriters to the extent of the loss on the cargo paid by them, and Bull & Co., for the value of their boat lost in the collision.

It is true that Mr. Benedict says] § 380, p. 210, as cited by the court, that "the practice of bringing suit "in the name of one person, for the benefit of another, "does not prevail in the Admiralty;" but he does not suggest, nor is it possible to suggest a legal reason why, in any proceeding, whether at law, or in equity, or in Admiralty, the complaining party, who is interested and legally entitled to sue, may not declare that he sues for the use of any one he may choose to designate.

In this very case, the court maintained the libel; and the decree was for $185 62 more than the amount paid by the underwriters, probably the value of the flat-boat

The case of the "Monticello" vs. Mollison, 17 Howard, is equally inapplicable.

And this gives me occasion to say, that the point decided, the thing adjudged, is the only part of a case which is authoritative; and that serious errors in jurisprudence may be avoided by keeping this always in view. In Fritz vs. Bull, the court decided that the owner of a boat lost by a collision might sue in the Admiralty, notwithstanding the fact that the underwriters of the cargo had paid the loss on the cargo, anterior to the filing of the libel; and that the libel was not vitiated by the declaration that it was also for the benefit of the underwriters, who also had an interest. In the "Monticello" vs. Mollison, the court decided that it is no defense to a libel brought by the owner of a vessel lost by a collision, that there had been an abandonment and acceptance, and payment of the loss to the libellant before the filing of the libel. Neither case decides, nor professes to decide, whether an assignee can proceed in his own name in the Admiralty; and neither of them has any bearing upon that question.

The case of the "Alida," decided in New York, is also without authority: 1st: Because the claim assigned was a debt for supplies, not a right to reparation for a tort; 2d: Because the local law of New York, upon which the decision rests, is peculiar in its terms and phraseology. It does not profess to give a lien to the creditor, but attaches it to the debt.

The Statute begins thus:

"§ 1. Whenever a debt amounting to fifty dollars or "upwards shall be contracted by the master, owner, "agent or consignee of any ship or vessel, within this "State, for either of the following purposes:

"1st. On account of any work, or materials for or to- "wards the building, &c.

"2d. For such provisions as may be fit, &c.

"3d. On account of Wharfage, &c.

"Such *debt* shall be a lien upon such ship or vessel, "her tackle, &c., and shall be preferred to all other "liens thereon, except mariner's wages." Rev. Stats. 1852, Vol. 2, pp. 733, 734.

No *person* is mentioned in the Statute as the favored creditor intended to be protected by the lien thus created; but the lien is expressly attached to the debt. It follows, that whoever may be the owner of the *debt*, there is established in his favor a lien for the payment, which he may enforce in his own name and right.

The New York Code of Practice authorises the assignment of choses in action, and requires the assignee to sue in his own name. Rev. Stats. 1852, Vol. 2, p. 199, § 111, *et seq.* The assignment of a debt, therefore, vests the legal ownership in the assignee, by express statute; and the consequence results, inevitably, that the lien, which is not personal, but which is attached to the debt, follows and is still attached to it in the hands of the legal owner, the assignee, and he may enforce it, not under the general maritime law, but under the statutes of New York. The lien is not maritime, but

statutory. The local law, which creates it gives that lien, not to the original creditor, nor yet to his assignee, but to the debt, to whomsoever it may belong; and the owner of the debt may enforce it in any court of competent jurisdiction.

The lien, resulting from a collision, is not statutory: and the rights of parties claiming such a lien must rest upon the maritime law, which gives the lien upon the vessel in fault. There is no such peculiarity in the maritime law, the common law of nations, as that which exists in the New York Statute; and maritime liens are established in favor of the creditor, not of the *debt* itself in matters of contract: and in favor of the party injured, not of the right to reparation in matters of tort. As an example, the Act of Congress of 1790 may be cited. Sec. 6 begins thus: "Every seaman or mariner "shall be entitled to demand," &c.; and the lien on the vessel is given expressly to the mariner, not to the debt. Gordon's Digest, § 1913.

In 12 Howard, and I7 Howard, in the cases already cited, it is intimated that the underwriters, after an abandonment and payment of the loss, may proceed for the damage caused them by the collision; and this is no doubt true; but this proposition in no way touches the question as to the right of the assignee of the underwriters to institute and maintain the action, which the law may give to his assignors. The underwriters are compelled to pay a loss on the vessel or the cargo; and the collision causing the loss is a direct injury to them, to the extent of that loss, as much as it would have been,

to the uninsured owners of the boat or cargo. When, therefore, the underwriter pays the loss, and proceeds against the colliding vessel, he sues in his own name and right for reparation for the damage resulting to him directly from the collision, not as assignee of the assured. The right is a legal one, and might be exercised in a court of law as well as in a Court of Admiralty. The Court say, in 12 Howard, that the payment of the loss by the underwriter puts him in a position to proceed for the damage; for, until he has paid the loss, he has suffered no injury. But having paid the loss, he has sustained a direct injury, and may sue the wrongdoer in any court having jurisdiction of suits for damages resulting from torts.

It cannot be pretended that the collision caused any damage to the assignee in respect to the assigned claims; and it is no hardship that there should exist no lien in favor of such an assignee. The assignee was not the owner of the cargo, nor in any way interested in it. It is not shown that he has paid, or that he is to pay anything for the claims assigned to him; and it is almost certain that no sane man would give anything more than a mere nominal consideration for a claim for damages resulting from a tort, which is doubtful at best, and which cannot be realized without a long, tedious and expensive litigation.

If the assignee recovers, therefore, upon the assigned claims, he makes a speculation; If he does not recover, he suffers no loss, but merely fails to realize the anticipated speculation. In any event, whatever be the loss

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which he may sustain, it must result from his over estimate of the value of the claims assigned, and his paying too high a price for them: And there is no reasoning or ingenuity that can show that the loss to the libellant, if there be any, in respect to the assigned claims, is caused by the collision.

As if a man assaults and beats another, or slanders him: the party beaten or slandered suffers damage directly from the tort; but if he should assign his claim for reparation to another, the assignee could not pretend that he has been effected either in his person or his feelings by the blows or by the slander. If he suffers any loss, it results directly from the fact that he has bought a claim for more than it is worth; and he would appeal in vain to the sympathies of the court or the jury for such pecuniary compensation as they might have deemed proper enough in favor of the wounded person or damaged reputation of the assignor.

The lien given on the colliding vessel is limited to the damage caused by the collision. The underwriters may have been injured by the collision, and may have been entitled to a lien on the colliding vessel for reparation; because it was the collision, the marine tort, and that alone, which caused the damage to them. But the assignee of the underwriters had no connection whatever with the damage which they sustained. Thinking it to his advantage, he procures from them a transfer of their claims against the colliding vessel. If he suffers any loss, it is not because a collision occurred between the two boats; but because he has purchased, with the hope

of gain, claims which do not yield him as much as they cost him; because the results of his contracts with the underwriters have not answered his expectations, and have not proved so profitable as he supposed they would. If he suffers any loss, it will be attributable solely to his voluntary and imprudent acquisition of the claims of the underwriters at too high a price; a consequence with which a Court of Admiralty has nothing to do, and which does not proceed from a marine tort.

The assignments to libellant were made at St. Louis, in the State of Missouri; and if their effect is to be tested by the law of Missouri, the basis of which is the common law, it seems to me they vest no right in the assignee.

Choses in action, that is, rights based upon contracts either written or verbal, were not assignable at the Common Law. The exceptions to this rule depend upon express statutes. And so, the statute of Missouri authorizes the transfer by assignment of bonds, bills of exchange, promissory notes, and "accounts for sums of "money, or for property due on contract." It is only since 1849, that accounts for sums of money, or for property due on contracts have been assignable; and in Chauvin vs. Laberge, 1 Missouri Reports, 396, the Supreme Court of that State held that money due on a verbal contract was not assignable under the then existing statutes. It is not to be supposed that a claim for damages *ex delicto* occupied a more favorable position, than a sum due on a verbal contract. It never was, and it never can be the policy of the law to make the right of action growing out of torts the subject of traffic and speculation; and such claims are in no manner trans-

ferrable under the Common Law system. See Gardner vs. Adams, 12 Wendell, 298, 299.

Such claims are personal to the party injured; and so true is this, as well at the Common Law as in most of the States of the Union, that an action brought by the party injured, for the recovery of damages *ex delicto*, abates by his death, and cannot be revived in favor of his personal representatives. See Blackstone's Commentaries, p. 302.

The first departure which the Legislature of Missouri thought proper to make from the rule of the Common Law, with respect to the transfer of choses in action, was to authorize the assignment of bills of exchange and promissary notes and bonds for money or property. In 1849, the Legislature further relaxed the rule of the Common Law, by authorizing the assignment of "accounts for sums of money or property." Revd. Stats. 1855, vol. 1, p. 322. This was a great innovation; and it may fairly be considered as the utmost extent to which the legislature was willing to go in authorizing assignments, and as a legislative declaration that no other claims or demands than those specially enumerated in the statute should be transferrable by assignment.

Smith vs. Kennett, 20 Missouri Reports, p. 154, decided in 1853, has been relied on as establishing a different doctrine.

The facts as disclosed in the petition, were these: Sloan was the owner of the steamboat "Jewess," sunk at the wharf at St. Louis, on the 1st Jan'y, 1852. On the 3d Jan'y, Mortimer Kennett, harbor master, under the direction of Luther M. Kennett, the mayor, took

possession of the wreck, in virtue of some pretended authority derived from a city ordinance. On the 18th March, 1852, Sloan conveyed and assigned to plaintiff his interest in the wreck and claim for damages. It was not alledged in the petition that plaintiff, the assignee, had made any demand for the wreck.

The Court of Common Pleas sustained a demurrer to the petition.

The Supreme Court said that the assignee of property converted, and of the right of action therefor, might maintain an action in his own name for the property and for damages.

" But it is also the opinion of the court, that the de-
" murrer to the petition in the present case was properly
" sustained by the court below. The plaintiff avers
" his purchase of the wreck and of the right of action in
" May (March?) 1852; he states that the taking and
" conversion of the property, that is the wreck, were
" made in January, 1852, before the plaintiff had ac-
" quired any right or interest therein. From the peti-
" tion, it may be plainly inferred that the wreck is still
" *in esse*. The plaintiff should then have made a de-
" mand and averred it in the petition, and having failed
" to set forth a demand, the court did right to sustain
" the demurrer. THE DEFENDANTS HAVE DONE NO-
" THING TO THE PLAINTIFF NOR TO HIS RIGHTS SINCE
" HE PURCHASED THE WRECK, in relation thereto. It
" was then his duty to make demand of them for the
" property in their possession, which he had bought.

" THE CONVERSION WAS NOT OF HIS PROPERTY: the
" demand and refusal to give it up would make the con-

" version of his property. From these considerations, " therefore, this court affirms the judgment of the court " below, the other judges concurring."

With due deference to the learned organ of the court who delivered this opinion, and to his colleagues who concurred with him, this is a most singular decision. If the court means to say that Sloan had a right to sell the property, the wreck, which was really his, but which was in the adverse possession of the defendants, and that the plaintiff, the purchaser, might sue for it in his own name, the decision may be perfectly correct. But why does the court complicate this proposition with the assertion that the assignee, of a claim for damages for the conversion of property, may sue in his own name, when the whole of that assertion is completely negatived by the subsequent conclusions of the court, and the assignee's right of action is wholly denied and he is turned out of court by the solemn decree of that tribunal.

The conversion was complete on the 3d Jan'y, and a perfect right of action had then accrued to Sloan, the owner of the property. But that was before plaintiff's purchase: and since his purchase defendants had done nothing to him nor to his rights in relation to the wreck. Before he could sue, the defendants must do some wrong to him or to his property; and the wrong which was done to his vendor and assignor did not enable him, the purchaser and assignee, to maintain the action.

The plain English of all this is, that the right of action for damages for the conversion, which was complete with respect to Sloan, the owner of the property at the time of the conversion, did not pass to his

assignee; and that some injury must be done to the assignee, or to his property, by a conversion of that property subsequently to his purchase. If the case establishes anything, it is this: that a claim for damages for the conversion of property is not assignable by the law of Missouri, so as to vest in the assignee the right of action which was perfect iu the assignor; and that the assignee cannot demand reparation for a wrong which was not done to him nor to his property, but to the property of another whose rights he pretends to have acquired by contract.

And this is precisely the proposition for which I have contended, and is the only logical conclusion that can be deduced from the decision in Smith vs. Kennett.

A reference to the statutes of Missouri will remove any doubt that may possibly exist on this point. It cannot be pretended that the section authorizing the transfer by assignment of "accounts for sums of money, " or for property due on contract," can be extended by implication or otherwise, to claims for damages *ex delicto*. Indeed the legislature, in the very article of the Code of Practice cited by the court in Smith vs. Kennett, excludes the possibility of any such extension.

" Every action must be prosecuted in the name of the " real party in interest, except as otherwise provided in " the next succeeding section (which relates to Execu- " tors, Administrators and Trustees); BUT THIS SECTION " SHALL NOT BE DEEMED TO AUTHORIZE THE ASSIGN- " MENT OF A THING IN ACTION NOT ARISING OUT OF " CONTRACT." Rev. Stats. 1855, Chap. 128, Art. 11, Section 1, p. 1217.

Where then did the judges of the Supreme Court of Missouri find the authority for asserting that the right of action for damages for the conversion of property, was assignable so as to vest a right of action in the assignee? Certainly not in the Statutes or Jurisprudence of their own State; nor can it be derived from any principle or analogy of the Common Law. They took care to render that assertion harmless in the particular case; but they have incurred the risk of doing a serious injury to jurisprudence, and of misleading those who have not access to the Statutes of Missouri, by an assertion so erroneous, and so repugnant to their own statutes as well as to the rules of the Common Law.

But if the court should conclude that the effect of the assignments was to vest the ownership of the claims and the right to sue on them in his own name, in the assignee, such a conclusion would determine nothing as to the right of the assignee to proceed in the Admiralty on the assigned claims. Neither the Statutes nor the Jurisprudence of the State of Missouri can confer jurisdiction upon the Admiralty. If it be granted that the assignments, by the law of the place where they were made, vested the title and ownership in the assignee, the question still remains to be determined, can the assignee proceed in the Admiralty, for the recovery of damages, for a marine tort, not done to him nor to his property, but to the property of his assignors.

The Circuit Court held that, as libellant was the master and owner of the "Western World," he was bailee of the cargo, and authorized to proceed for the loss of

the goods. But it must be observed that he was not master of the boat at the time the collision occurred. He had left the boat at Memphis, and given up the command to Fulton; and his precarious title as bailee had vested in Fulton. If the right of action would otherwise have been in libellant, it ceased by the abandonment to the underwriters. The actual possession of the wreck, and the right of action for the loss of the cargo were in the underwriters; and it is manifest, by the pleadings, that libellant rests his demand and right to recover for loss on the cargo solely upon the assignments. His right as bailee was derived from the owners of the goods. When they abandoned their right ceased, and so did that of their bailee; and he sues, not as a bailee responsible for the safe carriage and delivery of the cargo, but in his own right under the higher title which he says vested in him [in virtue of the assignments by the underwriters, who had become the owners by the abandonment. His former right as bailee was necessarily merged in the superior title under which he claimed: and he cannot be allowed to recover under the inferior title of bailee after having voluntarily accepted the assignments which necessarily terminated his right as bailee. It is to no purpose to say that as master of the boat and bailee of the cargo he might have sued for the loss, when he has actually sued in a different character, and claims in his own right as assignee.

2. As to the second question it seems to me there can be no doubt. The objection is that no Admiralty

or maritime cause of action exists respecting the assigned claims: and that this appears from the libel itself in which part of the complaint is based upon the assignments. It is an objection patent upon the Record on mere inspection.

The libellant may have good cause of action upon the assigned claims: but if it is not an Admiralty or maritime cause of action, the District Court could not entertain it, and could only decline to consider it. So far as the action of that court is concerned, the position of the libellant was just what that of a plaintiff, in an action at law, would be, if the allegations of his declaration showed no cause of action. No judgment could possibly be rendered in his favor.

The Admiralty is a court of limited jurisdiction, and there can be no stage of an Admiralty proceeding at which it may not be shown that the court has no right and no power to take cognizance of the cause. It need not be by plea or exception; it may be suggested at any time in argument; and the court is bound to notice, no matter when or how its attention is called to the fact, that the state of case presented by the pleadings and evidence is one not falling within its jurisdiction.

Whenever the jurisdiction of the court is limited, it must appear by the pleadings that the case is within its cognizance. Without citing authorities in support of a familiar distinction, and one which is acted upon daily by our courts, I may say that whenever the want of jurisdiction results from some personal exception, established in favor of the defendant, as, for instance, that he does not reside within the territorial limits of the

court, he may waive that objection, and by a plea to the merits, give the court jurisdiction to hear and determine the cause. But where the want of jurisdiction is *ratione materiæ*, the consent of the parties cannot cure the defect; and the court is bound to proceed no further in the cause as soon as its want of jurisdiction appears. See Lafon's Ex'rs vs. Lafon, 1 N. S. 703.

The District Court having pronounced for the damages referred the cause to a Commissioner to ascertain and report the amount. The Commissioner heard testimony as to the value of the boat, and also as to the amount embraced in the assignments, which he should not have done if the assignee had no right to proceed in the Admiralty. He reported, allowing the whole amount demanded in the libel; and the District Court was called upon to confirm the report, and to decree, in favor of libellant, for the amount of damages thus ascertained.

But it was objected, by way of exception to the report, that the District Court was without jurisdiction touching the assignments. The court was bound to enquire and to ascertain if the assignments fell within its cognizance, and to determine the exception to the jurisdiction, before it could proceed to a final decree. All other inquiry was arrested, any other was useless, until the court had passed upon that exception; and if there was a want of jurisdiction touching the assignments, the court could no more include them in its decree than it could a debt upon a promissory note.

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which I contended, the libel is clearly multifarious, being based partly on a tort, in so much as it seeks reparation for the loss of libellant's boat, and partly on contract, in so much as it demands the amounts transferred to libellant by the underwriters. Whatever legal consequence may attach to this objection, I respectfully submit that the libellant cannot enforce the assigned claims in the Admiralty; and that he must seek his remedy upon them, if any he have, in some tribunal of ordinary and less limited jurisdiction.

Whether the objections thus presented be tenable or not, the case, in my opinion, is with the claimants upon the merits.

The theory of the libellant is, that the "Western World," descending the river to New Orleans, with a large and valuable cargo, when nearly opposite the town of Princeton, in Mississippi, running parallel with the Princeton bar, about two hundred yards from the shore, between four and five o'clock in the morning of the 14th December, 1852, discovered the lights of the "H. R. W. Hill" ascending, running close in to the bar. The "Western World" gave her signal, one tap of the bell, when about a quarter of a mile off, indicating her intention to pass down on the larboard side of the "Hill," that is, between the "Hill" and the Arkansas shore. This signal was answered by the "Hill" by two taps of her bell, indicating her intention to pass on the starboard side of the "Western World," that is between the "Western World" and the Arkansas shore. The "Western World" immediately stopped her engines, and commenced backing. She repeated her signal,

which was again crossed by the "Hill." The "Hill" did not stop her engines, but came quartering out from the Mississippi shore, and struck the "Western World" on the larboard side, about from eight to fifteen feet aft of the stem, with the larboard bow of the "Hill," causing the "Western World" to sink in a few minutes.

The theory of the claimants is this: The "Hill" was running up near the foot of Princeton bar, and when about opposite a low place in the bar, sufficiently defined on the map, her pilot saw a light on the water, which he took to be a raft or a flat. He immediately sheared over to the Arkansas side, and had straightened up as close in to the Arkansas bar as he deemed it prudent to run, when the light of the "Western World" was perceived on the "Hill's" starboard bow. The "Western World" signalled to pass between the "Hill" and the Arkansas shore. The pilot of the "Hill" seeing that the course of the "Western World" was improper and dangerous, immediately stopped the engines, and ordered them to be shipped up for backing. He then rang his alarm bell two taps, indicating that he was running up the bar. The "Western World" repeated her signal of one tap, and continued her course, which was almost directly across the river. The engines of the "Hill" were backed, the starboard engine had made several backward revolutions, and the boat was receding, when the "Western World" struck head on, on the starboard side of the stem of the "Hill," splitting her stem on the starboard side, and bending her stem band, of heavy iron, to the larboard, and staving in the bows of the "Western World."

Just before the collision, the "Western World" was in such a position that the whole of her larboard skylights were visible from the pilot-house of the "Hill," showing that she was approaching nearly directly across the river; and she would have struck the "Hill" about the aft end of her boilers, but for the fact that the "Hill" was receding so rapidly, and the backing hard on her starboard engine threw her bow out, so that she received the blow on a less vulnerable point.

An immense mass of testimony has been taken on both sides to establish these respective theories; and it involves the same lamentable contradictions which characterize the testimony in all collision cases. Some of these contradictions may fairly be attributed to the different points of view from which the witnesses saw the occurrences to which they testify: some of them to the natural imperfection of memory and observation; but some of them indicate gross corruption, and a reckless disregard of truth and justice.

Fortunately for the claimants, there are certain physical facts, about which there can be no doubt, which the witnesses for the libellant have not been able to contradict, and which establish fully the truth of the theory of claimants. When the "Hill" returned to New Orleans, the inspectors held a survey on her bow, and they found her stem split on the starboard side, from the ten foot six inch mark down to the three foot mark, and a piece of one of the hood ends of the "Western World" wedged in the split and broken off. The hood ends are the ends of the plank where they are fastened to the stem.

The stem band of the "Hill" was bent to the larboard. The split ranged backward from the starboard to the larboard, and was barely visible on the larboard. There was no other scratch on her stem. See report of inspectors, R. 146, &c.; testimony of R. L. Robertson, 145, 147; Amos Applegate, 150.

Afterwards, Latham, a wrecker of experience, accompanied by Nixon and a number of laborers, went to the wreck of the "Western World" where it lies on a sand bar, dug away the sand, and found no injury except the staving in of her bows. Not a scratch anywhere else. "Her stem was knocked out plump and smooth," in the language of Mathis, one of the witnesses for libellant, who visited the wreck soon after the disaster. See testimony of Latham, 144, *et seq;* Nixon, 151; Mathis, 92; Angel, 143.

The boats cannot be placed in any position, with the "Hill" between the "Western World" and the Mississippi shore, in which the blow could have been given and received as it was. It is physically impossible.

It is shown by the testimony of McNairy, a well known gentleman of Nashville, Hatcher, a merchant of Kentucky, Hitchcock, Secretary of the Chamber of Commerce at Nashville, Bush, a lawyer of Gallatin, Tennessee, Gilbert, a merchant of Nashville, Jennings, a steamboat captain of Memphis, that Fletcher, the pilot at the wheel of the "Western World," and Fulton, acting captain were drunk. McNairy knows that Fletcher was drunk when he came on board the "Hill," a few minutes after the collision; for he saw him as he came

upon the deck, and he staggered against McNairy. R. 124, 129. Most of the officers of the "Western World," who came on board the "Hill," began to drink at the bar immediately; and within twenty minutes after the "Hill" left the wreck, they were seated at the card table, playing draw poker, having their money displayed on the table, and making their bets, each provided with his glass of liquor. Jennings says, answer to 10th Interrogatory, R. 292, that "the sums were pretty large: "there was some silver and gold, but most of the stakes "were in notes. They commenced drinking shortly "after coming on board the "Hill," say two or three "minutes, and continued drinking and gambling until "about 10 o'clock." Fletcher was especially rude and boisterous; and great indignation was expressed by the passengers on the "Hill" at their recklessness and total indifference to the terrible catastrophe which had just occurred.

Gilbert says, answer to 8th Interrogatory: "In about "twenty minutes after the boats separated and the "'Western World' had sunk, he saw nearly all, if not "all the officers of the 'Western World' in the social "hall of the 'Hill,' including the captain and one pilot. "He noticed that the captain and one pilot, the one that "was on watch at the time of the collision, were rude "and boisterous, both drunk, and gambling at a card "table, and conducting themselves in a very unbecom-"ing manner." R. 281.

And in answer to the 9th Interrogatory, he says: "He can only repeat that the captain and one pilot "were drunk."

Jennings says in answer to the 8th Interrogatory: "At the time the officers of the 'Western World' came "on board the 'Hill' they seemed as if they had been "on a spree." R. 292.

Bush, p. 133, says: "My opinion is that the pilot, "whose name I believe was Fletcher, was badly intox- "icated." Such was the impression made upon Bush's mind by what he saw immediately after the collision, that he says, answer to 8th Int. p. 134: "The apparent "recklessness and drunken condition of the officers of "the "Western Word' induce me to believe that the "calamity was occasioned by their imprudence or wick- "ed design."

It is in vain that the libellant has found witnesses who testify to Fletcher's good character and sobriety. He was drunk on this occasion, if he never drank before; and his conduct deprives his testimony of all title to credit. The other officers of the "Western World" are equally unworthy of belief. No man's life or character, or fortune, ought ever to be put in jeopardy by the testimony of the pilot, or captain, and other officers in charge of a steamboat, who could come from such a scene of disaster, with the wail of drowning men and of helpless women and children in their last agony still ringing in their ears, and sit down to their mad, drunken orgies at the gaming table, as these heartless people did.

And here I cannot forbear to say that it is strange that these people, some of whom ought to have been asleep, and who had barely time to save themselves, should have had money enough on their persons to en-

gage in the game of poker, so soon after the disaster.

I do not intend, however, to rest the credibility of these witnesses upon the proofs of their unworthiness to which I have adverted; but I shall proceed a step further, and by a careful scrutiny of their testimony, shall show that some of them have sworn to positive falsehoods; and that others of them are contradicted, in important particulars, by disinterested and unimpeached witnesses.

Fletcher's testimony bears upon its face intrinsic evidence of falshood. He says, p. 13: "Witness observed "to his associate pilot, Mr. Blois, who was standing "near him, 'that boat is coming up the river, I will "give her choice of sides.' Witness gave the first sig- "nal by tapping his bell once. She crossed the signal "by tapping twice. Witness instantly stopped his engine, "and reversed them, and repeated his signal by tapping "the bell once. The signal was again crossed by the "'Hill.'"

A pretty way, truly, to give the ascending boat choice of sides! He gives the first signal, and when it is answered by the other boat by a signal indicating an intention on her part to pass on the opposite side, he persists in the selection which he has made, repeats his signal, and holds the course which he has selected!

Again he says, p. 16: "The ''Hill' knocked the "'Western World' round, so that immediately after "the collision she lay square across the river, as near as "I can judge." At page 13, he had already said: "The "'Western World' had no headway on her at all, no

" more than the current of the river would give at the " time of the collision;" and just before, on the same page, he had said: " At the time the 'Hill' ran into the " 'Western World' the latter was backing, and was " straight in the channel."

He must have supposed, when he ventured on this wonderful story, that this cause would be heard and determined by persons wholly ignorant of physical laws. Can any rational man believe that a boat floating with the current of the Mississippi, an inert mass of from 1200 to 1500 tons including vessel and cargo, could be moved by a blow from another boat so that her position would be changed, and, being straight with the channel, that she would be thrown round by the force of the blow nearly square across the river, almost at a right angle with her position at the time of receiving the blow? Not only the boat itself must be moved, but the immense mass of water in which it floats, exceeding in weight the boat and cargo. No steamboat was ever built of materials strong enough to give such a blow without being herself crushed. If it were otherwise possible for a blow to be given with sufficient force to produce such an effect, no material used in building boats is strong enough to resist such violence; and the boat receiving such a blow would have her sides crushed by the resistance of the water, or would have her hull cut through and be severed in twain before she would be thrown round at a right angle with her former position.

The truth is, Fletcher knew that it would be conclusively shown that the position of the "Western World"

the moment after the collision was nearly square across the river; and he attempted to guard against the consequences of that fact by attributing it to the force of the blow. Perhaps he did not know that it would be proven that the position of his boat was nearly square across the river while she was approaching the "Hill," and so continued up to the moment of collision, or he might have invented some equally ingenious explanation of that important fact.

Fletcher was asked if he had said, on board the "Hill," after the collision, anything about the "Western World" being insured. He denied positively having said any such thing. Hatcher, a passenger, says Fletcher spoke of the collision, and remarked, "it did not make a "damned cent of difference," or words to that effect, "the 'World' had run four seasons, was insured for "more than she was worth, and it was about time she "would lose money." This remark of Fletcher was about the first Hatcher heard from the crew of the "World." R. 130.

Gerard, Irwin, Whistler and Connolly all heard Fletcher speak of the "Western World" being insured for more than she was worth. Some of them did not remember the amount for which Fletcher said she was insured; but some of them remember it was twenty thousand dollars.

It is not necessary to scrutinize the testimony of Blois, the other pilot. He merely repeats what Fletcher said before him; and, moreover, he is contradicted by George G. Campbell, a merchant of New Orleans. Blois was asked if he had not said to Campbell, that the collision was unavoidable, and that the "Hill" was not to blame,

or words to that effect. He positively denied having said any such thing, though he said he had frequently talked with Campbell about the collision. R. 22.

Campbell says Blois' family were boarding at his house at the time of the collision. He asked Blois which boat was to blame. Blois answered "that "neither boat was to blame, that it was an unavoidable "accident. This he repeated three or four times, and "also five or six months afterwards. He said at the "same time that Captain Norton was after him for his "deposition, and that he did not see the use of his giving "it, that it could be of no service to either party," p. 147.

Blois was not so ignorant as to believe that his testimony, as given, if true, was not of the utmost importance to the libellant; and in that testimony he imputes the blame entirely to the "Hill," without mentioning one single exculpatory fact in her favor.

Fulton says, p. 36: "there was no drinking by my "officers that I saw or knew of, on the "Hill," imme- "diately after the collision. There was some card play- "ing and drinking the evening of the sam "nothing unusual."

At page 37, he says: "The stem of the ' "split, and the piece that was bent o. l "shoved to the starboard side." He wen "Hill" from the place of collison to the m Ohio, and while the boat was at Cairo, he portunity to examine and see what injury she had sustained. In another place he repeats the remark just quoted and adds: "The injury must have been received "on the larboard side of the stem of the "Hill."

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Blois was not so ignorant as to believe that his testimony, as given, if true, was not of the utmost importance to the libellant; and in that testimony he imputes the blame entirely to the "Hill," without mentioning one single exculpatory fact in her favor.

Fulton says, p. 36: "there was no drinking by my "officers that I saw or knew of, on the "Hill," imme- "diately after the collision. There was some card play- "ing and drinking the evening of the same day; but "nothing unusual."

At page 37, he says: "The stem of the "Hill" was "split, and the piece that was bent or broken was "shoved to the starboard side." He went up on the "Hill" from the placc of collison to the mouth of the Ohio, and while the boat was at Cairo, he had an opportunity to examine and see what injury she had sustained. In another place he repeats the remark just quoted and adds: "The injury must have been received "on the larboard side of the stem of the "Hill."

The testimony of Jennings, Gilbert, McNairy, Hatcher, Hitchcock, Bush and Edwards, shows that Fulton testified falsely with respect to the drinking and gambling, in which he himself participated, within less than an hour after the collision, He may have said truly, that there was nothing unusual in the drinking and gambling which he witnessed. Doubtless, it was not unusual for his officers to indulge in these vices; for they commenced drinking and gambling immediately after they came on board the "Hill," and continued drinking and gambling while they remained on board, during the voyage to Cairo. Their conduct did not seem unusual to Fulton who knew him, and who was accustomed to their ways; but it attracted the attention and excited the indignation of the passengers on the "Hill," and was characterized by them, very justly, as rude, boisterous and unbecoming.

Of course Fulton was too old a boatman to mistake the larboard for the starboard side; and the inspectors, Shaw and Robertson, and Applegate the carpenter who repaired the stem of the "Hill," prove that he did not testify truly as to the side on which the blow was received, or as to the effects of that blow.

At page 27, Fulton says the safe was not locked. The key, he thinks, was in his room. The safe fastened by a peculiar turn of the handle. At page 30, he says: "After I got on the boiler deck of the "Hill" I re- "quested several of the hands of the "World" to get to "the safe and get out its contents, telling them that the "money and the policies of insurance were there, and

" that they could open it by the turn of the handle; but " no one got to it that I am aware of. I said nothing " about my hat."

I have quoted the latter portion of his testimony above, because it is more convenient to dispose of this witness at once. The commissioner relied solely on his testimony in support of the items allowed for freight and passage lists, and money which Fulton swore was lost with the safe, amounting together to over five thousand dollars. No other witness has said anything respecting these items; and I wish to show that he is not of sufficient credibility to establish any fact in the cause.

Jennings saw Fulton when he came on board the "Hill," and was standing within a few feet of him all the time that Fulton was on the boiler deck of the "Hill." He says: "Fulton called to the clerk of the " Western World," who had not yet left the boat, to go " into the office and get his hat, and to look in the safe " and get the insurance papers of the boat. Ans. to 5 Int. R. 292.

" Capt. Fulton told the clerk of the "Western " World" to look in the safe and get the insurance " papers of the boat. This was about four or five min- " utes after the collision." Ans. to 6 Int. R. 292.

" Captain Fulton told the clerk to get his hat from " the office, and to look in the safe and get the insurance " papers of the boat. The clerk answered that he did " not have the key. Captain Fulton told him that the " key was in the safe, and the safe was not locked."— Ans. to 7 Int. R. 292.

And while on the subject of the money in the safe, it will be observed that Fulton says that he had not counted it, but that there was *about* so much. Smith says, p. 99, that Murphy, second clerk, (Fulton was first clerk, acting captain in the absence of Norton,) came to the office of the "Hill," carrying an armful of books, which he asked deponent to take care of; and he then turned to go out, when deponent asked him if he had got his safe out. His reply was no. He asked Mr. Murphy what was in the safe; and he replied there was no money in it. McNairy, R. 124, also mentions the fact that he saw a person coming on board with an armful of books.

Ichabod T. Hill, when asked what he knew about a sum of money being in the safe, says, he knows nothing about money in the safe; but that the clerk of the "Western World" had plenty of money next day, and plenty of time to have saved what money was said to have been in the safe. 110.

It is a little remarkable that the libellant, who has sought out witnesses in every possible quarter, has made no effort to procure the testimony of his second clerk, Murphy. It is too extraordinary to be believed on the testimony of Fulton alone, that over two thousand dollars in money were left in the safe. and were lost with the wreck, when there was time enough for Blois to go down from the pilot-house into the cabin and wake up the cabin passengers, so that not one of them was lost; and time enough for Murphy to save an armful of books, comparatively of insignificant value. Fulton was

up, standing out forward when the collision occurred, and had been for some little time before; and it is hardly possible that he would have forgotten the money in the safe, or that Murphy would have packed off an armful of books from the office, and left the money behind.

No doubt Jennings has stated exactly what occurred between Fulton and the clerk; and that Murphy told the truth when he said to Smith that there was no money in the safe. Whatever sum may have been there, was taken out either by Fulton or Murphy, or some other person on the "Western World" and a portion of it most probably was displayed and bet at the card table, in the game of poker, at which all the officers of the "Western World" took a hand, so soon after the disaster.

Fletcher and Blois, pilots, Fulton, clerk and captain, Bougher, mate, and Wiedman, second watchman, are the only persons on board the "Western World" who pretend to have seen the "Hill" before the collision: and they all place the "Hill" between the "Western World" and Princeton bar; and locate the collision on the larboard side on the Mississippi shore. Of course, they all say the "Western World" was backing; and they impute the blame wholly to the "Hill."

Hatcher says that he heard the acting captain speaking of the collision, the day after it occurred. He said he was on watch, and on the bow at the time; "and "said it was unavoidable or inevitable, owing to the "darkness of the night; and if he gave any other rea- "sons I don't remember them. P. 130.

Gerard, Bell and Farnsworth, pilots, Irwin mate, Graham and Whistler, engineers, Hill, watchman, and McNairy and Lawson, passengers on the "Hill, saw the "Western World" before and up to the moment of collision; and they all place the "Hill" near the Arkansas shore, between the "Western World" and the Arkansas shore: and they say the "Hill" was backing.

McNairy was sitting at the stove in the hall, when a fellow passenger came in and said a boat was running into them. He immediately went out forward, and remained until after the collision. "At the time he got "out on the guard the "Hill" was headed up the river, "and the "Western World" was coming directly "across the river towards the "Hill," and he thought "the "World" would strike the "Hill" at the boilers, "but did not strike until she struck the stem of the "Hill," owing to the "Hill's" receding." P. 122.

"When he first saw the "Western World," he could "see the left hand, or Arkansas shore, but could not see "the other shore. The bow of the "Hill" was pointed "up stream: the bow of the "Western World" was "pointed towards the "H. R. W. Hill" and Arkansas "shore, square across the river." 123.

"He knows that the "Hill" was receding, from the "fact that he could tell by the timber on the shore." 123.

"He knows that the motion of the "World" was "continued from the fact that although the "Hill" was "receding fast, the "World" hit her. He is very cer-

" tain of it. He knows that the "World" was coming " towards the "Hill" and not backing, or she would " not have hit the "Hill." 128.

" He knew that the "Hill" was backing by noticing " the trees on the shore, which plainly showed to him " that the "Hill" was backing." 128.

Smith, clerk, slept on the larboard side of the "Hill." He heard the collision; got up, went out on the larboard guard, could see nothing on the larboard side, concluded they had hit a drift log, and he laid down again. 99.

Lawson's room was on the starboard side of the "Hill." He was sitting at the door of his room. Saw the "Western World" approaching on the "Hill's" starboard quarter. She continued the same course until she struck the "Hill" on the starboard side of her stem. 271.

Hatcher's room was on the starboard side of the "Hill." He jumped out a few seconds after the collision. He had been awakened just before by the ringing of the bells. When he got out the boats were from 50 to 60 yards apart, and the "Western World" from 30 to 40 feet to the right. 130.

Connolly was at the starboard engine of the "Hill." If the "Western World" had approached on the larboard side he could have seen her. He did not see her until after the collision, and then he had to go over to the starboard side of the "Hill." 283.

Jennings went out forward immediately after the collision, and he says he could see the Louisiana shore.

Of course he means the Arkansas shore. The northern line of Louisiana is some five or six miles below the point of collision. 292.

Not one of the witnesses for claimants has been in any manner impeached; and I think there is some moral weight in the fact that almost all the important testimony for claimants was taken in June, 1853, within less than four months after the libel was filed, and was published during the summer and fall; while the first testimony taken by libellant was that of Fletcher and Blois, in April, 1854, more than a year after the cause was at issue, and when the libellant knew exactly what most of the witnesses for claimants, who profess to have seen the collision, had stated.

Gerard, Bell, Farnsworth, Graham, Hill and McNairy whose testimony was taken at Nashville, in June, 1853, and Irwin, whose testimony was taken at New Orleans, in May of 1854, all describe accurately the manner in which the "Hill" received the blow, the part of her stem which was injured, and the extent of that injury. They might very well have learned these particulars by an examination of the "Hill" subsequent to the collision. But they also describe with equal accuracy, the part of the "Western World" which gave the blow, and the nature and extent of the injury which she received. Too much importance cannot be attached to this latter fact. These witnesses never had an opportunity of seeing the "Western World" after she separated from the "Hill," a short time after the collision; and the truth and accuracy of their account of the manner

in which the blow was given, and of the effect of that blow upon the "Western World," are corroborated in every respect by the testimony of Latham, Nixon, Angel and Mathis. How could these witnesses have known when they were committing themselves to that important fact, under oath, that it would be fully corroborated by a subsequent examination of the wreck, made in November, 1854?

The witnesses for libellant had not examined the wreck, and they all locate the injury from 5 to 15 feet aft of the stem of the "Western World." They swore up to the theory of libellant; and their statement of the injury is proven not to be true by the same testimony, the established condition of the wreck, which so fully sustains the witnesses for claimants.

Mathis, wrecker, says, p. 90: "I would say that "the 'Western World' was struck on the larboard "side of her bow, about fifteen or sixteen feet, as near "as I could judge from the stem. I cannot tell the "size of the hole. The timbers appeared to have been "driven in and broken off. The hole was largest at top "and smallest at bottom. At the bottom the hole "semed to be merely cut in; at the top, the timbers "and plank were broken in a space of ten or twelve "feet, as I now remember."

Against this statement we have the fact sworn to by Mathis, in the same deposition, p. 92, that the "stem was knocked out plump and smooth." We have also the testimony of Latham and Nixon already referred to; and that of Angel who was in the employ of Mathis,

his diving bell man, who was working at the wreck all the time Mathis was there, from January to July, and who was in every part of the hull getting out the cargo. He says, pp. 142, 143, that he discovered no injury any where, except that the stem of the "Western World" was knocked out the whole length of it, down to where it joined on the keel.

Mr. Mathis cannot explain, nor can anybody else explain, how a blow received fifteen or sixteen feet from the stem, which cut into the hull, and was ten to twelve feet wide, could have knocked out the stem "plump and smooth." It is simply not true: and it will not do to rely for proof of any fact in the cause on a witness who, whether from the imperfection of his memory, or from a corrupt disregard of the truth, errs in so important a particular.

The testimony of Henry Evans, a flat-boat pilot, was regarded in the court below as important for the libellant. I propose to show that this testimony is worthless: that it conflicts in some essential particulars with well established facts, and with the testimony of the officers of the "Western World."

Evans says, p. 84, that he met the "Illinois" a short distance above Johnson's negro cabins; and it is proven by Drouillard, p. 152, that the negro cabins are close to Johnson's house. He was not mistaken as to the name of the boat; for he says that it was not so dark but that he could see the names both of the "Illinois" going up and the "Western World" going down, as they passed him.

Fletcher, p. 12, Blois, p. 20, and Fleming, pilot of the "Illinois," p. 24, all say that the "Western World"

and the "Illinois" met about opposite Johnson's, which is nearly two miles above the place at which Evans locates the collision. Evans says his flats were floating four and a half miles per hour, 83: and Fulton says the "Western World" was running from ten to fifteen miles per hour. She must have averaged fully twelve miles, including stoppages, having run, as Fulton says, from Memphis to the point of collision, about 300 miles, in from 24 to 26 hours. R. 35, 36. So Evans would have us believe that his flat-boats, going with the current, at the rate of four and a half miles per hour, had passed over the same distance, about two miles, in the same time as the "Western World" running at least twelve miles per hour! He could by no possibility have been within one hundred yards of the two boats, as he pretends he was, nor within a quarter of a mile of them, at the time of the collision, if he swears truly as to the place at which he met the "Illinois;" and if he swears falsely as to the place at which he met the "Illinois," the legal presumption is that his entire testimony is false.

But, even if he had been as near as he pretends he was, how could he, in a dark night such as this was, when there was a low mist on the water, and it was drizzling rain, have seen accurately the positions of the two boats, their manœuvering, and the parts of each that came together? His position on the flat-boat was elevated but a few feet above the surface of the water, and it was not possible for him to have seen as plainly as he pretends to have done.

At page 81, he says: "I heard signals from the bells "of the two boats. The 'World' first tapped one bell "and stopped her engines. She floated on sometime "and tapped her bell again one tap, and immediately "commenced backing. About the time the 'World' "began to back the 'Hill' tapped two bells."

"When the 'World' got about opposite or alongside "of my flat-boat, she tapped her bell once, and stopped "her engines, and floated on some little time and tapped "her bell once again. She then rang her backing bells "and commenced backing. At that time, or when the "backing bells of the 'World' were rung, the 'Hill' "tapped her bell twice."—p. 82.

Fletcher says, p. 13: "Witness gave the first signal "by tapping his bell once. She crossed the signal by "tapping twice. Witness instantly stopped his engines "and reversed them, and repeated his signal by tapping "the bell once. This signal was again crossed by the "'Hill,' which tapped twice."

Edward Morgan, engineer of the "Western World" says, p. 75: "The bells of both engines rang to stop be-"fore the collision, and then immediately both engine "bells rang to back. We made from six to ten back "revolutions before the collision." This witness also says in another place, in going down stream we were making probably twelve revolutions a minute. In back-ing we make not one-half so many I suppose.

What then becomes of Evans' statement that the "Western World" gave her first signal, stopped her engines and floated some time, repeated her signal, then

rang her bells to back, and then that the "Hill' gave her signal of two bells? And what becomes of that other statement of his that the "Western World" was backing so hard that he was afraid she would back up on his boats?

Evans' credibility is very seriously damaged by the testimony of John D. Haynes, Turner and others, residing at Aurora, in Indiana, where he was born and brought up; and who prove that he was of "low social "position, and had the reputation of being a wild and "reckless young man, addicted to habits of gross immo-"rality." R. 262, *et seq.*

One of the witnesses says: "When I first became "acquainted with Evans, he had the reputation of being "a wild and immoral young man, of unsteady and dis-"creditable habits; and afterwards, from 1852 to 1856, "he had the reputation of a bad and dishonest man." R. 265. Just such a character as would be a fit tool in the hands of a designing litigant; and just such a character as courts of justice do not choose to rely on for proof of controverted facts.

Evans was asked if he had not made certain statements to Porterfield, at Vicksburg, touching the collision, and if he had not left his name and address with Porterfield, and a message for Capt. Newell of the "Hill," to the effect that he would be a good witness for the "Hill" in the event of a suit. He positively denied having done any such thing. He says he merely went out in the skiff at Vicksburg, was not there more than five minutes, and only told Porterfield that he had a sack of papers belonging to the "Western World."

Porterfield says, Evans came to the wharf-boat; told him he had some freight on his flat-boat, about a quarter of a mile above the wharf-boat, lard or lard oil, which he had found afloat in the river; and he wanted to know whether Porterfield would ship it for him. Porterfield told him to take it to New Orleans, and deliver it to the underwriters.

Evans remained at the wharf-boat about half an hour. When he left he went ashore and went up the bank. "He had told me his flat-boat was lying at the Bayou, "which is the usual flat-boat landing for such boats as "wish to escape the payment of wharfage fees to the "corporation.

"Evans said nothing to me about a sack of papers "belonging to the 'Western World,' nor of anything "else except barrels of lard or lard oil. I can't say ex-"actly what number of barrels he mentioned, but it was "somewhere in the neighborhood of twenty barrels."

"He said if ever this thing came to a suit, he would be "a good witness for the 'Hill'; for she was in her right "place coming up around the bar, and the 'Western "World' was floating sideways without steam. He "asked me as a special favor to take his name down, "and his address, which I did; and subsequently I "handed his name and address to Capt. Newell." R. 273, 274,

Evidently all this was known to the counsel for the "Hill" in the summer of 1854, when they crossed the interrogatories propounded to Evans, on the part of libellant, and laid the ground for contradicting him. It is worthy of remark, that the commission under which

Evans' testimony was taken, was issued on the 4th November, 1854; that his deposition was not taken until the 15th October, 1855; was produced by libellant, filed and published on the 29th December, 1855, when the cause was set down for hearing; and was offered in evidence on the 2d January, 1856. This will account for the fact that Porterfield's testimony was not taken before the trial in the District Court.

Porterfield's statement must be true; for no possible motive is suggested which could have induced him to invent, so long since, this means of testing Evans' veracity, when he had no reason to suppose that Evans would not tell the same story as a witness that he had told Porterfield immediately after the collision.

This testimony shows another important fact: That Evans intended to convert to his own use the goods that he had picked up from the wreck, no mention of which is made in his long deposition: and that he deserved the reputation of a "bad and dishonest man," which he had acquired at his native town.

The testimony of Pennington Ray and Westley Ray, who say they were with Evans on his flats, part of his crew, is equally contradictory and unsatisfactory.

Pennington Ray says, when the boats came together they were between the flats and the Mississippi shore, nearly opposite, or a little below the flats.

"Heard one boat give her signal, and I think it was "the down stream boat. I did not hear any engine "bells until just as I heard the crash, and then I heard "a great jingling of engine bells, but could not make "any distinction as to what they were for.

"The stern of our boats was towards the steamers, "and we were heading across the river, pulling out "from the boats.

In the first part of his deposition this witness says when he came out he saw two boats, one ascending, the other descending. The ascending boat was below the flatboats, and the descending boat was above. The descending boat was nearest to us.

In another place he says: "The 'Western World' "never passed us that night, at least never after I came "out. She was behind us at that time. She came down "and got opposite to us, or a little below, when the col- "lision occurred. I did not see her stern lights."

And in another place he says: "I cannot tell which "boat was nearest the Mississippi shore. They both "looked to be the same distance. They both looked "like they were going to our left. When they struck I "cannot say which was on the inside or nearest the "shore. I could not tell which of the boats was near- "est us." R. 247 to 250.

Wesley Ray says he heard no bell or other signal.

"Our boats were quartering across towards the Arkansas shore." Answer to 5th cross-interrogatory. R. 256.

"Had to look to larboard and ahead to see the two steamers,"—Answer to 8th cross-interrogatory, 256.

"I should think we were distant from the Western "World' when she capsized about 100 yards. We "were above her, and I should think it was some five "minutes after the collision, perhaps more. The 'Hill'

"was above us, near the shore."—Answer to 11th cross-interrogatory. R. 257. He does not inform us by what wonderful feat in navigation the flatboats had managed to get between the two steamboats, so that the "Western World" was below and the "Hill" above.

"The 'Hill' was at no time between us and the Ar-"kansas shore, neither was the 'World' while I saw "them."—Answer to 25th cross-interrogatory. 259.

Is it possible for any one to take the testimony of Evans and the Rays, and locate the steamboats, or even the flats which they were on? Evans says: "The "'World' was between me and the 'Hill' at the time of "the collision, or rather I was on the same side with "the 'Hill,' and could see the whole length of the "'World' to her bow." Is that a possible position? If the "World" was between him and the "Hill," he was on the same side with the "World": if he was on the same side with the "Hill," the "Hill" was between him and the "World."

How does Evans' statement compare with that of Pennington Ray, that the steamboats were between the flats and the Mississippi shore? Or with Pennington Ray's statement that the stern of the flats was towards the steamers? Or with Wesley Ray's statement that he had to look to larboard and ahead to see the steamboats, which would have placed the steamboats below and to the left of the flatboats?

It is abundantly proven that the instant after the collision the two steamboats separated, the backing of the "Hill's" engines having taken her down the river some

fifty or sixty yards off, and that she then went ahead again and came up on the starboard side of the "Western World." To have accomplished this, upon the hypothesis that the "Hill" was backing at the moment of the collision, both her engine bells must have been rung to stop, both must have been rung to go ahead, and both must have been rung again to stop when she got along side of the "Western World." If she was not backing at the moment of the collision, her bells must have rung to back, which would have made four ringings of her bells, within a very short time, less than five minutes, after the collision: and yet Pennington Ray heard engine bells but once, and that was just as he heard the crash; and Wesley Ray heard no bells!

It is established by the testimony of the officers of the "Western World," and by all the witnesses for claimants, that the two boats were together after the "Hill" came alongside the "Western World," for a considerable time, until the "Western World" turned over, when they separated, and the "Hill" went to the shore and made a landing. This could not have been done without two more ringings of the engine bells of the "Hill;" and yet the Rays did not hear the engine bells and did not see any of this manœuvering! The "Hill" appeared to them to be stationary all the time after the collision until they floated out of sight. The "Hill" never followed them; but the wreck of the "Western World" followed them, about half a mile behind, and continued in sight, at about the same distance, for some hours.

Pennington Ray says he thought both the boats had

gone ashore : "We saw the freight around us before we "saw the wreck. At the time we first saw the cargo "around us, I looked back and saw the river full of "boxes, barrels, kegs, floating behind us, some of it not "more than fifty or sixty feet from us. We could see "it clear back to the wreck. From the time I saw the "freight in the river, I never lost sight of the wreck "for about two hours."

Is it possible that such testimony as this can be regarded as confirmatory of any theory? Are these the witnesses who are to corroborate the five witnesses for libellant, Fletcher, Fulton, Blois, Bougher and Wiedeman, who pretend to have seen the two boats approach and strike each other; and who are to destroy the testimony of the nine witnesses for claimants, Gerard, Bell, Farnsworth, Hill, Graham, Whistler, Irwin, Lawson and McNairy, who witnessed the collision, and who swear that the "Hill" was on the Arkansas shore, and that the "Western World" approached the "Hill" on the starboard quarter, and struck her on the starboard side of her stem? And of Smith, Hatcher, Connolly and Jennings, who state facts which prove that the "Hill" must have been between the "Western World" and the Arkansas shore, and that the "Western World" approached and struck the "Hill" on the starboard? And of Shaw, Robertson and Applegate, who prove that the "Hill" received the blow on the starboard side of her stem? And of Angel, Latham and Nixon, who prove that the "Western World" must have struck the "Hill" stem on, so that her bow was staved in, and her stem knocked out "plump and smooth?"

It is evident that Evans and the Rays either did not witness the collision, or that their recollection of the circumstances attending it is too indistinct to enable them to state the position of their boats and of the two steamboats respectively; or that they have wilfully concealed what they saw, and misstated what actually occurred. Their testimony cannot avail the libellant for any purpose; and cannot aid the Court in fixing the locality of the collision, or in determining how it occurred.

It is not possible to tell, from the testimony of these witnesses, where they were when the collision occurred. One prominent difficulty, apart from their contradictions of each other, and the impossibility of reconciling their statements with established facts in the cause, is, how they came to be in the midst of the floating cargo, with the wreck half a mile behind them.

Evans says his flat-boats passed the two steamboats when the "Hill" was holding the "Western World" up against the current. The steamboats must have been in slacker water than the flat-boats, if the flats were above them when the collision occurred, or something must have checked the steamboats, otherwise they would have floated with the current as rapidly as the flats, and would have continued to be ahead of the flats. Now the Princeton bar was a cut bar, and the current flowed up to the bar, so that there was no slacker water between the flats and the bar than that in which they were floating. But there was slacker water on the Arkansas bar, between the flats and the Arkansas shore. Gerard says

after he got alongside of the "Western World," he went ahead on his engines, and tried to push the "Western World" over on to Princeton bar. The steamboats got nearer and nearer to the Princeton bar; and after they got about in the track of the flat-boats, the "Hill" holding the "Western World" up against the current, the cargo meanwhile becoming gradually disengaged, the flats passed the steamboats, and found themselves at once in the midst of the floating cargo. Shortly afterwards, the two boats separated; for the Rays saw the wreck low down in the water and following them. And Henry Evans and the Rays were not near the steamboats until some time after the collision, when the "Hill" had pushed the "Western World" considerably over towards the Princeton bar, and when the boats were about to separate.

Whether this conjecture be true or not, it is not possible to deduce any conclusion as to the position of the boats, or the locality of the collision from the testimony of Evans and the Rays. They were very busy picking up the cargo, some of which they peddled along the coast, some they divided in kind; and for a small portion one of the Rays pretends to have accounted to the underwriters on their arrival at New Orleans. R. 248.

The testimony of the Rays fully confirms what Porterfield says about Evans having told him he had picked up a quantity of lard or lard oil, since it was not possible for Porterfield to have learned in any other way that Evans had saved any portion of the cargo, much less what description of cargo it was.

The proctors for libellant attached considerable impor-

tance, in the court below, to the fact that some cattle, assumed to have been part of the cargo of the "Western World," were seen next morning on shore, on the Mississippi side, a short distance below the foot of Princeton bar; and that other portions of the cargo and some pieces of the cabin had floated ashore near the foot of Princeton bar.

No witness mentions the cattle or pieces of the cabin except Mackall, one of the engineers of the "Western World," ans. to 9 Int., p. 70. We cannot know what he means by a "short distance below the foot of Princeton bar," or what distance is designated by the term "*near* the foot of Princeton bar."

Mathis also says he found some of the cargo near Carolina Landing. But he arrived at the wreck about a week after the collision, and proceeded on up the river on horseback. He found twenty barrels of lard; but it had been taken charge of and rolled out on the shore; and he knew nothing of the place at which it floated in except as it was pointed out to him by people on the shore. 89, *et seq.*

Obviously this testimony is not sufficient to fix the locality at which the cattle or the cargo first reached the shore. Who has undertaken to say how many barrels or boxes may have reached the shore at points above Carolina Landing, or on the opposite side of the river, and have been carried off by the negroes or other persons in the vicinity, during the week that elapsed after the collision before Mathis arrived?

Mathis does not undertake to say where the 20 bar-

rels of lard floated in. He says, p. 86: "The farthest "point up the river that I found any cargo, was at the "upper end of Turnbull's landing, two and a half or "three miles below Princeton, marked on the map A. "B. as 'Carolina Landing.' The freight had lodged in "the tops of trees and drift wood, from which it was "taken, as they then told me."

Inferences are properly drawn from facts; but the facts must be fully established. It will not do to prove one fact of a series and to presume the existence of the others, and to deduce a conclusion from the whole. Mathis proves that he found 20 barrels of lard at a certain place. No conclusion can be drawn from this naked fact: but if we presume that these 20 barrels were part of the cargo of the "Western World;" that they reached the shore where they were found; that they were put afloat at the exact point at which the collision occurred; that no other cargo from the wreck reached the shore higher up on either side of the river; that the course which these 20 barrels took was not influenced by any other cause than the direction of the current; that the current flows always uniformly, and bears floating objects invariably in the same direction; that there is but one locality from which barrels put afloat could reach the place at which these barrels were found, we might as well go on and presume that the collision occurred at that locality. But if in aid of one single established fact, we are to presume so many other essential facts, which may or may not exist, it would be more convenient, and equally as logical, to presume at once that the

desired inference is true; and that the collision occurred at any locality which the theory of the libellant may require him to select.

Who has identified the 20 barrels of lard or the cattle seen on the shore as having ever been on board the "Western World?" Who can pretend to know the direction in which a frightened cow or ox, thrown suddenly into the Mississippi river from a sinking steamboat, in a dark night, would swim, whether to the nearest shore, or with the current? Has the beast such unerring instinct as would cause it to start off immediately for the nearest land? Is it not entirely probable that the animal, under such circumstances, would follow the wreck for a time at least, and that the direction which it would take after leaving the wreck, might be influenced by accidental causes, wholly independent of the distance from the shore, or of natural instinct? Who has said, or can pretend to say where these animals first reached the shore; or how far up or down the river they may have wandered after they reached the shore, before they were seen by Mackall?

There was an eddy of considerable width at the foot of Princeton bar; and whatever floating substance might be brought into that eddy, would be retained there until it was thrown out by the emptying of the eddy, if it happened to be near the line separating the eddy and the current, or by the force of the wind, or some other accidental cause driving it into the current. This eddy extended some distance below the foot of the bar; and objects floating in the river, might be driven

by the wind or by the waves of steamers across the current and into the eddy, when if left to the mere force of the current they would escape the eddy entirely. No man can undertake to say where cargo found on that shore or in that eddy was put afloat. Peterson, a witness for libellant, a pilot of experience, says that cargo put afloat anywhere in the channel, on the Mississippi side, would not float in at Carolina Landing unless forced there by the wind; and the same cause would bring cargo put afloat near Johnson's on the Arkansas side, into the lower part of the eddy and ultimately in at Carolina Landing. R. 202.

These 20 barrels were not put afloat at the same time and at the same place with other portions of the cargo; since all put afloat at the same time would have been subject to the same natural influences, and must have reached the shore at the same place. It is not possible to tell when or where the current began to act upon these 20 barrels, or what natural or accidental causes, from which the other portions of the cargo were exempt, forced them alone into the locality at which they were found, while other portions of the cargo were found in the possession of persons on shore, lower down and on the opposite side of the river, and the final resting place of the wreck was some twenty miles below.

No satisfactory conclusion as to the locality of the collision can be deduced from such testimony; and the Court cannot make it the basis of a decree.

The testimony of the witnesses for claimants will

stand the strictest scrutiny. There may be slight discrepancies in their statements, in such particulars as the distance between the two boats when the "Hill" commenced backing; and as to whether the signal bell of the "Hill" or her engine bells to stop rang first. But such discrepancies prove that these witnesses were not swearing up to a theory; that there was no connivance between them, and that they stated the facts as they remembered them. Whistler differs from Gerard as to which rang first, the signal bell or the engine bells to stop; but Gerard testified in 1853, and Whistler in 1855. Moreover, there was nothing to occasion the time of ringing of the signal bell to be particularly noted. It did not indicate danger. It might have been for the heaving of the lead, as Irwin, the mate, supposed it was when he heard it, or the signal on meeting a down stream boat. But the ringing of the engine bells to stop, when there had been no preparations for a landing, conveyed at once to the mind of every one who heard it, the idea that something was wrong; and this would be observed by those who would have paid no attention to the tapping of the signal bell. It was Whistler's business to hear and to obey the engine bells; and it was very easy for him, more than two years after the collision, to be mistaken as to the time of the ringing of the signal bell, which indicated nothing requiring any special duty or attention on his part.

So, Whistler thought the two boats were not more than sixty feet apart when his engine began to back.

But he says he did not observe particularly; and that his position was not such as to enable him to form so

correct an idea of the distance as those could do who were on the hurricane deck of the "Hill."

The witnesses for claimants all agree in these important particulars: that the "Hill" was near the Arkansas shore, headed up the river: that the "Western World" approached her on the starboard quarter, and was headed nearly square across the river: that the "Hill" was receding at the time the collision occurred: that the "Western World" struck the "Hill" on the starboard side of her stem, with the stem of the "Western World;" and that the bow of the "Western World" was knocked in by the force of the blow. These are the cardinal points in the cause, and they negative the whole theory of the libellant.

The officers of the "Hill" are fully corroborated by the passengers, by the inspectors, by the carpenter who repaired the stem of the "Hill," and by the wreckers and Nixon, who carefully examined the "Western World." McNairy swears that the "Hill" was backing; and he says he knows this by having observed the trees on the shore. It is in vain for the libellant to urge that the night was too dark for McNairy to have seen the trees from his position forward on the boiler deck of the "Hill;" for Fletcher, and Blois and Evans, his witnesses, say they could see both shores. Evans says it was not so dark at any time that night but that he could see both shores from the middle of the river.

So, as to the drunken condition of the officers of the "Western World:" the passengers whose testimony I have already referred to, are corroborated by Graham,

the engineer, who says, p. 107: "Fletcher, pilot of the "Western World" seemed to be under the influence of "liquor when he came on the "Hill:" and by Hill, who says, p. 107, that he does not know of any of the officers being drunk, but knows of some who came on board being drunk, but cannot say as to their being officers. Graham says he did not take any particular notice of them afterwards; and Hill's duties as watchman kept him up all night, so that he must have slept by day, and had very little opportunity of seeing the officers of the "Western World." He knows that some persons came on board the "Hill" drunk, whether or not they were officers he does not know; but the testimony of other persons shows that among that number were Fulton and Fletcher.

The witnesses for claimants swear that the "Hill" was running as close to the Arkansas bar as she could with safety; and several of libellant's witnesses say that, at that stage of water, an up stream boat would have to stand out at least a quarter of a mile from that shore. When the "Western World" approached nearly square across the river, and persisted in her intention to pass between the "Hill" and the Arkansas shore, after the "Hill" had indicated the course she was running, there was nothing left for the "Hill" but to back, and get out of her way if possible. This she endeavored to do, and would have done, if the "Western World" had not approached so rapidly.

This cause is not to be determined upon the mere conjecture that it was possible for the pilot of the "Hill" to have gotten out of the way of the "Western World,"

if he had began to back his engines sooner. When the "Western World" gave her first signal, her course was so improper and so unusual that Gerard could not tell what she meant. He reasonably supposed that his answer to her signal would cause the pilot of the "Western World" to desist from that course; and it was not until the signal of the "Western World" was repeated that Gerard could have supposed that she would continue the dangerous course first indicated. By this time the two boats were very near together, and the danger of a collision was imminent. No time was allowed for reflection. The safety of the "Hill" and the lives of the passengers on board depended on proper manœuvering instantaneously; and while it was certainly Gerard's duty to avoid a collision if possible, it was also his right and his duty to make the collision, if in his judgment it was inevitable, as little disastrous as possible to the "Hill," by presenting to the blow the least vulnerable part. He thought the "Western World" would strike the "Hill" about the aft end of the boilers, the effect of which would have been to cut into her hull, probably to break the connection between her boilers, and either to drown, or scald to death, her passengers and crew.

It is all well enough for us, looking calmly at what we understand from the testimony to have been the position of the two boats, to imagine that the collision might have been avoided by this or that manœuvre; but Gerard was bound to act in presence of great and immediate danger, without a moment's time to think or choose; to act with reference to the high responsibility resting upon him, and in view of the disastrous conse-

quences of hesitation or mistake on his part. He did not believe that it was possible for him to avoid the collision; and it is not proven, nor can it be proven, that he could have avoided it. He is not to be condemned, nor are the claimants to be held responsible in damages, upon the mere conjecture that, if he had resorted to some means different from those which he did adopt, the collision might possibly have been avoided. He did that which in his judgment was best under the circumstances; it was the best that he could do; and his course saved the "Hill" and her passengers and crew.

It is idle to talk about the "Hill" giving the blow which knocked out the stem of the "Western World," and stayed in her bows, since it is not possible to make a boat move sideways, at least with sufficient rapidity to do any mischief by contact with the stem of another boat. And, besides, the "Hill" was backing. Moreover, Bougher, R. 44, mate of the "Western World," and Symonds, R. 61, bar-keeper, prove that the jackstaff of the "Hill" did not fall, while that of the "Western World" did fall in the collision. The blow which stayed in the bows of the "Western World," which split the stem of the "Hill," which forced one of the hood ends of the "Western World" into the split and broke it off, and which bent the stem band of the "Hill" to the larboard, was a violent blow, and came necessarily from the starboard quarter. That blow was not given by a boat that was backing. If it could have been given by the "Hill," her bows would have been driven in; or, at any

rate, the falling of her jackstaff would have been inevitable.

The theory of the claimants is altogether reasonable and consistent; and it is fully sustained by the testimony of unimpeached witnesses. The theory of the libellant is wholly irreconcilable with the facts proven in the cause; and the testimony of his witnesses is inconsistent, and proven not to be true in many essential particulars.

The testimony of Capt. Gilbert, of Lawson and others, shows that the "Western World" was very deeply laden. It is proven that it is safer to run an up-stream boat, with such a load as the "Hill" had, than a heavy laden down-stream boat in a dark night; and that this was a dark night, and unsafe for a heavily laden down-stream boat. And yet, the officers of the "Western World" prove that on this dark night she was driven at a speed of at least twelve miles an hour.

The condition of the officers of the "Western World," when they came on board the "Hill," and their reckless conduct afterwards, indicate but too plainly that they were not fit to be trusted with valuable property, much less with the lives of the unfortunate passengers on their boat, and point unmistakeably to them as the persons by whose fault the collision occurred,

The opinion of the Circuit Court was that the collision occurred on the eastern or Mississippi shore, while the "Hill" was crossing to the opposite side. That the pilot of the "Hill" was guilty of a fault in attempting te cross in the face of the descending boat; and that this was the proximate cause of the collision.

Admitting for the present what I have endeavored to show, and must still insist is not true, that the collision occurred on the eastern side of the river, and within one hundred and fifty yards of the Princeton bar, as the libellant and his witnesses pretend, was the fault entirely with the "Hill," and was Fletcher blameless?

The evidence satisfied the court below that the "Western World" was driven at a rate of speed which increased the risk of collision with other boats. If she had been going slower, the collision would certainly not have occurred, upon the hypothesis that she was in the channel, and the "Hill" was crossing from the Princeton bar. The pilot of the "Hill," when about to make the crossing, had a right to assume that the descending boat was navigated with the slackened speed and caution rendered necessary by the darkness of the night. If she had been so navigated there would have been ample time for the "Hill" to have crossed in safety, and to have gotten beyond her track.

When it became necessary to manœuver the two boats in order to avoid a collision, the difficulty and delay of checking the "Western World" were correspondingly increased by her great speed. If her speed had been less she could have been checked sooner and made to recede; and the collision would not have occurred.

The speed of the "Western World," therefore, contributed materially and directly to the collision, upon any hypothesis deducible from the testimony; and as that speed was dangerous for a heavily laden down stream-

boat, in so dark a night, it was a fault in navigation which ought, at least, to divide responsibility for the consequences.

The court concluded, also, that the pilot of the "Hill" failed to give a signal indicating the direction in which he was going; and that the pilot of the "Western World," after waiting until the boats were so near to each other as to require a signal, exercised the right or performed the duty of indicating her course.

The act of Congress of August 30, 1852, by which inspectors were appointed with authority to adopt regulations for the government of vessels when meeting, did not go into effect on the Mississippi river, until the 1st January, 1853, nearly a month after this collision occurred. Moreover, neither Fletcher nor Blois, the pilots of "Western World," attributes any fault or dereliction of duty in this respect, to the pilot of the "Hill." It is not likely that they would have omitted to mention so important an error, if it had really existed; and no man ought to have known better than Fletcher whether Gerard was in fault in this respect. His testimony on this point is very short, and is a connected narrative of the events in the order in which he pretends they occurred.

"Witness then observed to his associate pilot, Mr. "Blois, that boat is coming up the river, I will give "her choice of sides; witness gave the first signal by "tapping his bell once; she crossed the signal by tap- "ping twice; witness instantly stopped his engines "and reversed them, and repeated his signal by tapping "the bell once; the signal was again crossed by the "Hill," &c." R. 13.

On page 15 he says: "We were about a quarter of "a mile off when I gave the first signal."

Blois says: "The 'World' continued until within "hailing distance of the 'Hill,' say a quarter of a "mile, or four or five hundred yards, when the 'World' "gave the signal by tapping her bell twice, &c." R. 18.

Now this testimony establishes two important facts: 1st—That there was no improper delay on the part of the pilot of the "Hill" in giving the signal indicating her course, for the signal was given by the "Western World" as soon as the boats were within hailing distance: 2d—That the pilot of the "Western World" did not give the "Hill" choice of sides as he says he declared he would do, and as the rules now require descending boats to do. The pilot of the ascending boat is to give the signal first, and it is only where he has failed to do so in proper time that the descending boat is authorized to give the signal. So far as the signals are concerned, therefore, if there was fault anywhere, it was on the part of the pilot of the "Western World," who did not wait to see whether the pilot of the "Hill" would give the signal in proper time, but himself took the initiative, deprived the pilot of the "Hill" of the right of choice, and gave the signal as soon as the boats were within hailing distance.

Fletcher says: "At that time (the date of the col-"lision) the water ran close up to the willows, and even "at low water the channel ran within about one hun-"dred and fifty yards or less of the willows, and a boat

"could land at the bar at any part of it nearly from the "head to the foot. It was what boatmen call a cut bar, "or bluff bar;" and Blois confirms this statement.

According to Fletcher's statement, the "Western World" was in such a position that he was able and willing to give the "Hill" choice of sides; and the question at once occurs, what prevented Fletcher from laying his boat close alongside the Princeton bar, or even landing at the bar if necessary to avoid a collision?

It requires no more practical experience than any traveler on a steamboat may acquire in a single trip, to see that, when two steamboats meeting are a quarter of a mile apart, one of them within one hundred and fifty yards of a shore at which there is sufficient depth of water for her to land, there is ample time and space for the latter boat to lay herself alongside the shore, and close up against it; and if this had been [illegible] "Western World," the "Hill" heading out from the Princeton bar, the distance between them would have been constantly widened, and there could by no possibility have been a collision.

It is in vain to say that the "Hill" was in the wrong place for an ascending boat. There is no wrong place for a steamboat on the Mississippi river, where space enough and depth of water enough are left for other boats to pass; and such was the case at this locality.

The mere fact that Gerard, on hearing the signal of the "Western World," responded by a signal indicating that he was pursuing a course different from that

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The mere fact that Gerard, on hearing the signal of the "Western World," responded by a signal indicating that he was pursuing a course different from that

which the pilot of the "Western World" required him to take, was not of itself wrong, and was not a fault. It was Gerard's duty to inform the pilot of the "Western World," as he did by crossing his signal, that he was pursuing a course different from that which Fletcher seemed to suppose he was; and as this notice was given when the boats were a quarter of a mile apart, according to Fletcher's statement, so far from causing the collision, or even contributing to it, it afforded Fletcher the means of avoiding the collision, by warning him not to pursue the course which he had indicated, when there was ample time and space for him to change his course, and to pass in safety on the starboard side of the "Hill." The crossing of the signal neither originated a risk, nor added to an existing peril. It was simply saying to Fletcher, "I am not going the way you seem to suppose "I am; I am not holding to the Princeton bar, but "heading off from it;" and this occurred at such a time and under such circumstances that the only legitimate consequence was the necessity which it imposed upon Fletcher of abandoning the intention which his signal indicated, and of passing on the starboard side, as he might have done without risk or inconvenience.

No reason is shown, no necessity of navigation is suggested either by Fletcher or Blois, for Fletcher's persisting in his intention to pass on the larboard side of the "Hill," when the pilot of the "Hill" had indicated that he was pursuing the opposite course. Fletcher and Blois show conclusively that no such necessity existed, when they assert that they were within one hundred

and fifty yards of the shore, that they were a quarter of a mile from the "Hill," and that there was sufficient depth of water for the "Western World" to have landed at the bar.

If Fletcher supposed that the commission of a fault by Gerard exonerated him from the obligation of using ordinary and proper measures to prevent a collision, he was greatly mistaken. If it was his absolute right to pass on the larboard side of the "Hill;" if there existed any rule of navigation authorizing or requiring him, under ordinary circumstances, to pass on that side, it was his duty to forego that right, and to depart from that rule in view of impending danger, when a persistence in his course would render a collision probable. If he knew that he was steering exactly right, and that Gerard was steering exactly wrong, it was his duty to change his course, to navigate his boat so as to obviate the consequences of the error of Gerard, and to take such a position as to avoid a collision. More especially is this true when there was space enough, and time enough, and sufficient depth of water to enable him to get out of the way so easily. Whatever he may have thought of the course which the "Hill" was pursuing up to the moment of receiving her answer to his signal, he then knew that her pilot was not keeping the Princeton bar, and that he intended to pass between the "Western World" and the Arkansas shore. The "Western World" was then under headway; and Fletcher and Blois speak highly of her steering qualities, declaring that they had full control of her

with helm and wheels. Of course, Fletcher had nothing to do but to put his helm down, the work of a moment, and to lay his boat close alongside of the Princeton bar. He does not pretend, nor does Blois pretend that her course was changed. On the contrary, they, and all the witnesses for libellant who testify on this point, assert that after the "Western World" had made the crossing from Johnson's, she straightened up with Princeton bar, about one hundred and fifty yards from the shore, and maintained the same position straight with the channel up to the moment of the collision, and until, as Fletcher says, she was knocked round by the force of the blow. True, they say that her engines were backed; but they do not pretend that she was receding. On the contrary, Fletcher's expression is that "*the 'Western World' had no headway on* "*her at all, no more than the current of the river would* "*give, at the time of the collision;*" and Blois says the same. It is strange that Fletcher, the cool, experienced and skillful pilot, should have sought to avoid the collision by holding his course, merely backing his engines to check the headway of the boat, but descending the river all the time, with the force of the current, in the same track, when it was so natural, so simple, and so obvious a course, to let his engines still go ahead, and to change his position by the use of his helm.

Let us see if Gerard could have avoided the collision so easily. When he responded to Fletcher's signal he must have already put his helm in such a position as inclined the bow of the "Hill" off from the bar, and

towards the Arkansas shore. No sane person can believe that he was running the Princeton bar close when he heard the signal of the "Western World," and that he purposely changed his course and ran off from the bar into the "Western World." Apart from the murderous malice which such conduct would indicate, and which nothing in the character of Gerard authorizes us to infer, the obvious danger to the "Hill," and the certain risk of his own life and of the lives of all on board the "Hill," would have deterred him from such a course.

When the signal was repeated by the "Western World," the "Hill" would be headed still more off from the Princeton bar, and it would necessarily have required still more time to bring her back parallel to the bar, than to have changed the course of the "Western World," running straight with the channel. Such a manœuvre by Gerard would have thrown the two boats nearer together, and have made a collision almost inevitable; whereas, if Fletcher had changed his course, and thrown his boat in towards the Princeton bar, every revolution of the engines would have taken him farther and farther from the "Hill," and have diminished the risk of a collision. In fact, such a course on the part of Fletcher would have rendered a collision impossible.

No reason can be suggested why such a course was not adopted by Fletcher; and even upon the hypothesis that the collision occurred on the eastern side of the river, within one hundred and fifty yards of the Princeton bar, it is clear that Fletcher was to blame, because

he failed to adopt a safe, easy and most obvious means of avoiding the collision.

If the collision occurred where Fletcher and Blois locate it, it would not have been proper or safe for Gerard to have attempted to regain a position parallel to Princeton bar, because he was necessarily ignorant of the manœuvring which Fletcher would adopt: and, in bringing his boat off her course so as to place her parallel and near to the bar, he would have been compelled to straighten her bow up against the current, so that the change in her course would have been effected slowly and the boats would almost inevitably have been brought into collision under headway about in the channel of the river. The consequence would, most probably, have been the immediate sinking of both the boats in deep water, and the loss of more than a hundred lives.

All the witnesses for libellant concur in the statement that the "Western World" was making from ten to twelve miles an hour. Taking the *minimum* speed, she was going 17,600 yards in 60 minutes, or 293 yards a minute. If her helm had been put down when her signal was crossed by the "Hill," so as to incline her bow to the bar, the force of the current would have acted almost broadside upon her whole length, and would have accelerated her speed across the channel, so that in a minute at most, she would have passed over the space between her and the Princeton bar, and been in a position of absolute safety. It would really seem as if some infatuation must have possessed Fletcher that he did not adopt such a manifest course; and upon his shoulders must rest responsibility for the collision which

would have been avoided by so simple a manœuvre, if his testimony be true.

But I maintain that the collision did not occur on the eastern side of the river; and that there are facts established in the cause by unimpeached testimony, which show that it must have occurred on the western side near the Arkansas bar. Gerard, Bell, Hill, McNairy, Graham, Irwin and Farnsworth swear to the fact positively; Smith, Connolly, Lawson and Whistler swear to facts which make it impossible that the "Western World" could have been between the "Hill" and the Arkansas shore, that is, on the larboard side of the "Hill," either as she was approaching the "Hill," or at the moment of the collision; and Hatcher, whose room was on the starboard side, and who went out on the starboard guard of the "Hill," the moment after the collision, fixes the locality of the "Western World" on the right of the "Hill," that is, on the starboard side, and between the "Hill" and the Mississippi shore. Even if the "Western World" was knocked round by the force of the blow, it is not pretended that the position of the "Hill" was changed until she went ahead and came up alongside the "Western World," after the collision; and if the "Western World" had been to the left of the "Hill" at the moment of collision, she would still have been to the left when Hatcher first saw her.

These witnesses are twelve in number, and no one of them inferior socially, or in point of intelligence and respectability, to any witness who has testified in behalf

of libellant. Robertson, Shaw and Applegate prove that the "Hill" must have received the blow on the starboard side of her stem: and Mathis, Latham, Nixon and Angel prove that the stem of the "Western World" was knocked out, as Mathis says, "plump and smooth;" two facts which establish conclusively that the blow came from the starboard quarter, and that it was given by the stem of the "Western World."

There is no position which the two boats could have occupied on the eastern side of the river at the moment of the collision, reconcilable with this state of fact. We must not forget that the witnesses for libellant place the "Western World" straight in the channel when the collision occurred. If the starboard side of the stem of the "Hill" had been presented to the stem of the "Western World" in this position, the "Hill" must have been nearly square across the river, pointing to the Arkansas shore, and below the "Western World." But this position would have made it impossible for the "Western World" to have been turned round by the force of the blow, so that the moment after the collision her bow was pointing to the Arkansas shore and her stern to the Mississippi shore, as Fletcher and Blois testify. If such had been the position of the "Hill," she would have been laying broadside to the current. The "Western World" was certainly moving with the force and speed of the current, according to Fletcher and Blois. The current, therefore, acting on the broadside of the "Hill," and the effect of contact with the descending mass, the "Western World," swept along by the current, combined, would have forced the "Hill"

down stream, and she might possibly have swung round; but by no possibillity could her stem have been forced up against the current so as to have stopped the downward motion of the "Western World," and have turned her nearly square across the river, at a right angle with her position at the moment of collision.

There is no collateral fact proven in the cause which tends to show that the collision occurred on the eastern side of the river; and this locality depends solely on the testimony of Fletcher, Blois, Fulton, Bougher and Wiedeman, officers of the "Western World," and of the flatboat men Evans and the Rays—in all, eight persons. The testimony of these witnesses has already been commented upon; and a further examination will show that it is not sufficient to destroy the testimony adduced by the appellants.

As to the fact of cattle being seen on the main shore, the morning after the collision, near the foot of Princeton bar, as testified to by Mackall alone, if it be true that they were part of the cargo of the "Western World," it is wholly valueless for the purpose of fixing the locality of the collision. Fletcher says the Princeton bar was about a mile long, and that the collision occurred about half-way down the bar. By examining the map it will be seen that if the cattle were put afloat at or near the point of collision, and if the collision occurred where the witnesses for libellant locate it, these animals would have reached the bar by swimming a distance of less than 200 yards. Whereas, in order to reach the place at which Mackall saw them, they must

have gone down the river fully half a mile to the foot of the bar, and then several hundred yards further across the intervening space of water to the main shore. Now, if animal instinct, which it is urged unerringly led these cattle to the land nearest the point at which they were put afloat, is relied on as indicating the distance from the place at which they were seen to the place of collision, how does it happen that they were found on the main shore, near the foot of the bar, when by swimming less than one-fourth the distance, they would have reached land on the bar?

It is very easy to account for the finding of these cattle near the foot of the bar. Suddenly thrown into the river, in a dark night, the most prominent, if not the only objects that they would see, would be the two steamboats, on one of which they had been for several days. They would naturally keep near the boats: and when the "Hill" made a landing below the foot of the bar, after the collision, they would follow her in, the "Western World" having then sunk almost out of sight, and thus reach the shore near the place at which the "Hill" landed.

The witnesses for Appellee are not consistent in their statements. Fletcher says, it was about a mile from Johnson's, on the Arkansas shore, to the place of collision. Evans says, that after the collision, the two steamboats floated down the river together about half a mile, where they and his flatboats passed each other. Ans. to 7th int., R. 80. In the latter part of his answer to the 13th int., he says, his flatboats and the

steamboats passed each other about opposite the foot of Princeton bar, which was the only time they passed each other. R. 82. In answer to the 5th cross-int., he says he met the "Hill" some three or four miles below Johnson's, but on the Mississippi side of the river. So, he makes the distance from Johnson's to the foot of Princeton bar just twice as far as Fletcher does.

Again: Fletcher and Blois say they met the "Illinois" at Johnson's; Evans says he met the "Illinois" at Johnson's. Either Evans did not meet the "Illinois" at Johnson's, or he could by no possibility have descended the river with his flatboats fast enough to have been within half a mile of the "Western World" and the "Hill" at the time the collision occurred.

As to the manœuvring of the "Western World," Evans is directly in conflict with Fletcher. In answer to the 13th direct interrogatory, he says: "The 'Western World' tapped her bell once, and stopped her engines and floated on some little time, and tapped her bell again once. She then rang her backing bells and commenced backing." Fletcher says: "Witness gave the first signal by tapping his bell once; she crossed the signal by tapping twice; witness instantly stopped her engines and reversed them, and repeated his signal."

Evans says, answer to 7th int., "when I first saw the 'Hill' she was running up the Mississippi shore, about a mile below the foot of Princeton bar. She pursued on up the Mississippi shore until she got up to the foot

"of Princeton bar, or a little above the foot, and then "turning out and running in a quartering direction for "the Arkansas shore, until she came in collision with "the 'Western World.'" Now if it be true that the "Hill" turned out in a quartering direction for the Arkansas shore, at the foot of Princeton bar, or a little above the foot, she must have worked off from the bar continually; and in going up the river half a mile above the foot of Princeton bar, where Evans and the other witnesses of Appellee say the collision occurred, she would have gone nearly half a mile across toward the Arkansas shore. This consequence is inevitable; and while Evans is endeavoring to fix the blame upon the "Hill," he makes a statement which shows that the point of collision could not have been on the eastern side of the river, near the Princeton bar.

In answer to the 5th interrogatory, Evans says that when his flatboats and the two steamboats passed, after the collision, about opposite the foot of Princeton bar, the steamboats were about three hundred and fifty yards from the bar. It is strange that the steamboats should have been so far from the bar, half a mile below the point of collision, if the collision occurred within one hundred and fifty yards of the bar, more especially if we observe what Gerard says, that after the collision he went ahead on the "Hill," and tried to run the "Western World" over on to Princeton bar. Although he did not accomplish that object, he must, of course, have approached, instead of making off from the bar, after the collision. And this tends to confirm

what I have already said, that if the "Hill" turned out quartering toward the Arkansas shore about the foot of Princeton bar, as Evans says, she must have been a considerable distance from the bar, when she was half a mile above the foot of the bar.

As to the Rays, I have shown already how they differ in the position of the steamboats at the time of the collision. They say the flatboats were headed down stream quartering toward the Arkansas shore. One of them places the steamboats to the larboard, the left, and ahead, which would have been below the flats and toward the Arkansas shore; and one of them places them astern, which would have been between the flats and the Mississippi shore. If they could have been mistaken in these particulars, it was just as easy for them to have been mistaken as to the side of the river on which the collision occurred. In fact, the locality of the collision depends upon the relative positions of the steamboats and the flatboats, according to the testimony of these witnesses; and but one of them places the steamboats in a position reconcilable with the theory that the collision occurred near the Princeton bar—that is, the one who says the steamboats were astern of the flats.

Fletcher and Blois would not undertake to say how far the boats were apart when the "Western World" commenced backing; but Evans, in answer to the 12th cross-int., says, they were about 200 yards apart. R. 86. Bougher thinks the "Western World" was two or three lengths off. Ans. to 17th cross-int., R. 44. And Wiedeman says the boats were some four hundred yards

apart when the engines of the "Western World" were first stopped. Ans. to 20th cross-int., R. 54.

Morgan, the engineer of the "Western World," says it takes ten seconds to stop the engines and ship up and back. R. 28. What could have induced Fletcher to stop his engines at the distance of four hundred yards from the "Hill," and to wait until the distance was reduced to two hundred yards before he commenced backing?

What hallucination could have possessed him thus to waste the precious moments after stopping his engines, thus to postpone preventive measures until it was too late to avoid a collision?

The testimony of Fleming, pilot of the "Illinois," is regarded as of great importance; and much weight seems to be attached to his statement that he supposed, from the position in which he had seen the two boats, that they must have come together down about the foot of the Willows on the Princeton bar. And yet this witness on cross-examination says: "I could not tell how the "'Western World' was running, what speed she was "making; I don't know how the 'Hill' had been run-"ning that night." And again: "It is very hard to "judge of distances on water at night, or even in the "day * * * * I could not tell what "distance the "Hill" was from us when I saw her." R. 25 and 26. How could he venture an opinion as to the place at which two boats would meet, when he declares that he does not know what speed either was

making, or how far they were apart? Opinions thus formed and expressed, in ignorance of the only facts upon which they can depend, cannot aid the inquirer after truth, and are utterly worthless in a judicial investigation.

If Fleming's statement that he met the "Western World" at Johnson's, precludes the idea that the collision occurred near the head of the Arkansas bar, the statement of Evans that he met the "Illinois," Fleming's boat, at Johnson's, makes it impossible that he or his flatboats could have been within a half a mile of the point of collision, upon the hypothesis that it occurred about a mile from Johnson's, as the appellee and his witnesses pretend. One or the other of these witnesses is evidently mistaken. Which of them shall we believe? If Fleming be correct, then Evans and his flatboatmen were not near the point of collision, and knew nothing of the circumstances. If Evans has told the truth, then Fleming was mistaken in his facts, and his inferences and deductions are necessarily incorrect and valueless.

I have said that it was a physical impossibility for the "Hill" to have knocked the "Western World" round; and I alluded to this, in connection with other statements made by Fletcher, as affording intrinsic evidence of the falsity of his testimony. An attempt may be made to sustain Fletcher by assuming that the stem of the "Hill" remained some time in contact with the bow of the "Western World," and that this caused the "Western World" to swing round across the current.

But no witness proves this; and the natural effect of the blow would have been to cause one or the other of the boats to re-bound. The proof is positive that the "Hill" was backing at the moment of collision. She must have been receding, as McNairy says he verified that fact by observing the trees on the Arkansas shore; and Hatcher says when he went out on the guard, the moment after the collision, the boats were some fifty yards apart. R. 130. It is also proven, beyond controversy, that the "Hill's" engines did not commence backing after the collision, and that she had to stop backing and to go ahead to come up alongside the "Western World."

Beside, on the hypothesis that the "Hill" was holding out from the Princeton bar, and the "Western World" straight with the channel, the effect of contact and of checking the motion of the "Hill," would have been to make her swing around, since she would have been almost broadside to the current, and fully exposed to its action. The swinging of either boat, resulting from the continued pressing of their stems together, would have been gradual; and, of course, that effect would have been produced much more slowly, if at all, upon the "Western World," lying straight with the channel, than upon the "Hill," lying nearly across the current.

Fletcher knew the difference between the sudden knocking of a boat round by the force of a blow and the gradual swinging, consequent upon prolonged contact. He says the force of the blow knocked the "Wes-

tern World" round, so that the moment after the collision she was nearly square across the river; and I maintain that this was a physical impossibility: that the timbers of both boats would sooner have been crushed; and that no steamboat was ever built of materials strong enough to give or to resist such a blow as would be necessary to knock such an immense mass round, across the heavy current of the Mississippi, at a right angle, with its position at the time of receiving the blow. It was one of the necessities of the Appellee's case to account for the position of the "Western World," incontestably proven to have been nearly square across the river the moment after the collision; and Fletcher's attempt to account for it, by the assertion that she was knocked round by the force of the blow, stamps his testimony with falsehood.

Quite a number of persons have testified to Fletcher's temperate habits. According to their testimony he must have been a model of sobriety and good conduct. And yet, the passengers of the "Hill," disinterested gentlemen of high social position, prove that he came on board within a few minutes after the collision drunk: that he began to drink at the bar immediately on coming on board: that within twenty minutes after two boats separated, the "Western World" having sunk, he was seated at the card table, drunk and gambling, rude and boisterous, conducting himself in a very uubecoming manner, causing great indignation to be expressed by the passengers of the "Hill" at his recklessness and total indifference to the terrible catastrophe which had

just occurred: and that he continued drinking and gambling as long as he remained on board the "Hill," during the voyage from the point of collision to Cairo, a period of several days.

What violence this sober, exemplary man must have been doing all this time to his habits and inclinations! We need not be surprised after this, that witnesses were found to testify that Henry Evans was an honest truthful man.

With respect to what Fletcher said about the "Western World" being insured, he denies positively having said any thing on the subject; and he is contradicted by Hatcher, Gerard, Irwin, Whistler and Connolly, not one of whom has ever been in any way impeached.

But upon the hypothesis that the collision occurred on the Arkansas shore, it has been argued that the fault was with the "Hill," and that it was a great dereliction of duty on the part of the watchman of the "Hill" that he did not communicate to the proper parties the fact that he saw the "Western World" fifteen minutes before the collision, and when she was two miles off.

Now when the "Western World" was two miles off she must have been in the bend on the Arkansas side, above Johnson's, and the "Hill" must have been about the foot of Princeton bar. No good could have resulted from communicating such a fact. The usual tracks of up stream and down stream boats were very different at this locality; and if the pilot of the "Hill" had known that there was a down stream boat approaching when they were two miles apart, he could not have known

what course she would take except from his knowledge of her proper channel. As he ran what he considered the proper channel for an up stream boat, his course would have been in no respect changed if he had known that there was a down stream boat in the bend above Johnson's.

But the watchman was evidently mistaken as to the time and distance, two particulars in which it is so easy to err. As the "Western World" was running at least ten miles an hour, and the "Hill" at least five miles, the two boats would have passed over the two miles in eight minutes. There is a strong probability, amounting almost to certainty, that the watchman did not see, and could have not seen the "Western World" before the pilot saw her; for the pilot was occupying a much more elevated position in the pilot house, and his attention was specially directed to that part of the river in which the "Western World" was. Gerard says after he had straightened up, and while he was running for the light of a steamboat that showed across the point at Johnson's, he saw the light of a boat coming round the point. A down stream boat being laden more heavily than an up stream boat the up stream boat would stand several feet higher above the surface of the water than the down stream boat, and the light of the up stream boat might well be seen across a point, while the down stream boat could not be seen until she would be coming round the point. Gerard and Farnsworth saw the "Western World" at the earliest moment when she was visible from the "Hill," and about the time she was seen by the watchman.

In answer to the 5th Int., R. 101, the watchman, Hill, says, the "Hill" had just crossed over to the Arkansas bar when he first saw the "Western World"; and this agrees with Gerard's statement that he had straightened up on the Arkansas side when he saw her coming round the point. It is not at all strange that they should differ as to the length of time between the first appearance of the "Western World" coming round the point and the collision. Gerard and Farnsworth think it was about five minutes, R. 100, the watchman thinks about fifteen.

The court below was of opinion that there was a discrepancy between the answer and the testimony of Gerard, the pilot of the "Hill," as to the course she was navigating at the time the collision occurred. But there is no real difficulty in this respect. The answer in general terms states the course of the voyage, up to within a few minutes of the collision: that the "Hill" was ascending the river, going round the island bar (that is the Arkansas bar), nearly opposite to the town of Princeton, running in the usual track, as near to the bar as was safe or proper, and whilst so running the light of the steamer "Western World" was perceived, &c., R. 7, 8.

Gerard begins with the time he came on watch, at the foot of Princeton bar. He "kept in sight of the bar "until he came to a low place in the bar, when he saw "the light of a flatboat, *and sheered over towards the Ar-* "*kansas bar*. He straightened her (the 'H. R. W. "Hill') up for a steamboat light that was showing across "the point." R. 97. Of course when he straightened

up for a steamboat light which showed across the point, he must have been near enough to the Arkansas bar to be under the point, otherwise the steamboat light would not have shown across the point, but outside of the point. He says he continued that course until the "Western World's" light showed between the starboard derrick and chimney of the "Hill." In the latter part of his answer to the 3d Int., R. 98, in which the language quoted occurs, and in which he gives the history of the collision, he fixes the locality close to the Arkansas bar.

In answer to the 4th Int., Gerard says: "the 'Hill' "was nearest to the Arkansas shore, and close in on the "Arkansas bar, and immediately between the 'Western "World' and the Arkansas bar." R. 100.

George Farnsworth, who was with Gerard at the wheel, says the collision occurred near the head of Island 89. "Before the collision the "Hill" was running up "the bar of Island 89, and *as close to the bar as she could* "*run with safety.*" R. 99.

The watchman, Hill, answer to 5th Int., says when he first saw the light of the "Western World" the "Hill" had just crossed over to the Arkansas bar, "*where she* "*kept close up to the bar until the collision occurred.*" R. 101.

Graham says: The "Hill" was running up close to "the Island bar on the Arkansas side, and appeared to "me straight up to the point." Answer to 5th Int. R. 102.

Bell, in answer to 4th and 5th Int., says the "Hill"

was nearest to the Arkansas shore, and that she was heading up for the Arkansas point. R. 100, 101.

The testimony of the witnesses for claimants, and their theory of the collision will be in perfect harmony, if we attend closely to the character of the locality. The river was not exceeding half to three quarters of a mile in width between the two bars. It was necessary for a boat ascending to stand out about a quarter of a mile from the Arkansas or Island bar. Fletcher's testimony, R. 15; Peterson's 201. As to width of river between the bars, see Bougher, ans. to 4th cross-int, R. 42; Drouillard, R. 152.

Now, no witness for claimants says that the "Hill" was at any time running near the Princeton bar. Gerard says he kept in sight of the bar until he saw the light of a flatboat, when he sheered over toward the Arkansas bar. As it was only from half to three quarters of a mile between the bars, and as the "Hill" was standing out at some distance from both, merely keeping in sight of the Princeton bar, she would have gone across not more than a quarter of a mile before she must necessarily have straigtened up. Boats were compelled to stand out about a quarter of a mile from the Arkansas bar, and in a dark night no pilot would attempt to run such a bar as close as he might do with safety in daylight.

Again: Peterson says, there was a raft aground on the Arkansas bar below the head of Island 89, fully half a mile below Johnson's, and that this raft must have been at least a mile from the low place in the

Princeton bar, opposite which Gerard says he sheered over towards the Arkansas bar. R. 201. Gerard, therefore, must have straightened up after this sheer, at least half a mile below this raft, as he would certainly have gone a quarter of a mile across the current by the time he had gone up half a mile. It was then that he saw the light of the "Western World" coming round the point, when the "Hill" must have been fully a mile below Johnson's.

Fletcher says: "Boats running up stream generally "ran around the Arkansas bar at that stage of water, "about a quarter of a mile from the bar. At the foot "of the bar the water is deep enough for a boat to run "close in. Just around the foot of the bar are some "spurs, which make it necessary for boats to stand out; "but at that stage of water they could run over them. "Boats usually stand out from the bar, and make "straight for the point at Johnson's." R. 15.

Fleming states the course which he navigated that night, which does not differ materially from the course which Gerard says he took; but Fleming says he has seen boats running a different course; and Hamilton, the pilot of the "Lewis Whiteman," testifies that she ran up that night on the Mississippi side, about in the track of a flatboat descending, that is, about in the channel of the river. So much as to Gerard's right to run at least *in sight of* Princeton bar.

It is fairly to be inferred from Gerard's testimony that he was running at a considerable distance from Princeton bar, merely keeping in sight of the bar, hold-

ing straight for the point at Johnson's, when seeing the light of a flatboat, he *sheered* over towards the Arkansas bar, instead of holding for the point as he had been doing; and when he had got over as close to the bar as he deemed it safe to run, he straightened up for the point again. This is certainly true, if Bell, Graham, Farnsworth and Hill are to be believed.

I attach no importance to anything that Evans says; but it is remarkable that in his answer to the 7th int., he confirms Gerard's statement to some extent, when he says the "Hill," when she got up to the foot of Princeton bar, or a little above the foot, turned out and ran in a quartering direction for the Arkansas shore.

The *sheering* towards the Arkansas bar has been attributed to the fact that Gerard discovered that he was on the wrong side of the river, and endeavored to get in his proper position in time to meet the descending boat.

But it is not possible to conceive the motive for such a manœuvre on the part of Gerard. If he had been running the Princeton bar when he heard the signal of the "Western World" or even when he first saw her light, there was depth of water enough for him to have held his boat close up to the bar, and so to have navigated nearly from the head to the foot of the bar. There would have been no peril in such a position; and it would only have been necessary for him to have kept the bar and to have permitted the "Western World" to pass on his larboard side as she insisted on doing. There is nothing in Gerard's testimony to authorize any

such inference; and the fact of meeting a descending boat while he was running the bar, instead of driving him from the bar would have kept him closer to it, more especially when the descending boat insisted on leaving the bar to him.

There was a very good reason for his sheering when he saw the flatboat light. He was then standing out considerably from the Arkansas bar, merely in sight of Princeton bar, probably near the middle of the river, holding for the point at Johnson's. The flatboat light would be low on the water and too indistinct to enable him to see either the distance or the position of the flatboat, or to judge accurately of her course. So, he *sheers*, inclines his bow from the point towards the Arkansas bar, and holds that course until he has gotten over as close to the Arkansas bar as he deems it safe to run, a place where no descending boat ought ever to be, and where he straightens up once more for the point.

It is really of no consequence whether Gerard was on the right side or the wrong side of the river, when he saw the flatboat light and sheered over towards the Arkansas bar, for, he had got close into the bar and straightened up, before the "Western World" came round the point at Johnson's, and he was navigating more than three hundred yards from the course which the "Western World" ought to have followed.

It may be urged that the collision might have been avoided if the engines of the "Hill" had been backed sooner.

Perhaps so; perhaps not. The "Western World"

insisted on the larboard side, and Gerard was trying to get out of her way. The testimony shows no lack of diligence in this respect; and, Gerard promptly adopted the measures which in his judgment were best. If the "Western World" had pursued her proper course down the channel, she would have been on the opposite side of the river. After taking a position of extreme peril to both boats, without the slightest necessity, she cannot shift the responsibility upon the "Hill," on the bare possibility that something might have been done which was not done to avoid the collision. The "Western World" was approaching the "Hill" in a most extraordinary position, nearly square across the river, at a place where no pilot would expect to meet a down stream boat. That Gerard was surprised at her being in that position, and insisting on passing between him and the bar, is evident from his first expression to Capt. Newell, on hearing the signal of the "Western World;" "What do the plagued fools mean!" he exclaims. He reasonably supposed that they would not persist in this extraordinary course, after being informed by his response to their signal, that he was running the bar, and that they could not pass on the larboard side. But a few seconds elapsed between the first and second signals of the "Western World," and there was very little time for manœuvring. The engines of the "Hill" had to be stopped, and this was done promptly on hearing the first signal. They must then be shipped up for backing; and, this no doubt occupied the whole time between the first and second signals of the "Western World" It is far from certain if the "Hill" could have been backed

sooner and harder, that the collision would not still have occurred, and have been equally disastrous. Possibly the stems of the two boats might not have come in contact, if the "Hill" had been a few feet further down the river; but from the position in which the "Western World" approached, if her stem had passed the stem of the "Hill," her guard aft of the stem would have caught the stem of the "Hill," her hull would have been cut into between her bow and the end of her boilers, and the result would have been equally as fatal.

As to Gerard's crossing the signal of the "Western World," it was his imperative duty to let Fletcher know which way he was running. He expresses it as his opinion that it was not more than two minutes and a half from the time the "Western World" rang her first signal until the collision occurred; and the "Western World" was then approaching nearly square across the river. He had no time to go to the starboard; for it would have been necessary for him to have pulled his boat off her course and to have gone the length of the "Western World," nearly three hundred feet, to the starboard. It would have been criminal in him not to have informed Fletcher that he was running the bar. If he had responded to the signal of the "Western World" by one tap of his bell, and had attempted to turn the "Hill" so as to pass between the "Western World" and the Mississippi shore, the boats would have come together under full headway; for there would have been nothing, of course, to warn Fletcher of the necessity of stopping and backing his engines. Not only would such a manœuvre have probably caused the immediate

sinking of both boats, but the loss of the lives of most if not all of those on board.

Fleming says: "If I were running close under the "Arkansas bar, going up, and were to meet a boat, and "she gave the signal to run between me and the bar, "when she was in such a position that she could not get "between me and the bar without crossing my bow, I "would immediately stop and commence backing." R. 26.

According to the testimony of the witnesses for claimants, this was exactly the state of case when the "Western World" gave her signal. She could not have gotten between the "Hill" and the Arkansas bar without crossing the bows of the "Hill."

All that Gerard could do was to get out of the way if possible. He apprehended, and had good reason to fear that the "Western World" would strike the "Hill" about the boilers; and believing the collision to be inevitable, as it no doubt was, it was his duty to save her, if possible, from so disastrous a blow. He did this by backing hard enough to make the "Hill" recede, while he threw her bow to the starboard as quick as possible, so as to present her stem instead of her broadside to the "Western World."

I do not find in the depositions of Hatcher, Gilbert, McNairy, Bush and Jennings, who testify to the condition of Fletcher and other officers of the "Western World," any evidence of an improper bias. Graham thought Fletcher was under the influence of liquor; and Hill knows that some persons come on board the

"Hill" from the "Western World" drunk. All of these witnesses could not have been mistaken; and it is to very little purpose to say that they did not know Fletcher, aud were therefore ill qualified to judge him. It requires but little acquaintance with a man to see whether or not he is drunk: it is not necessary to know any thing of a man's temperament to determine that he is rude and boisterous.

Certainly no retro-active effect ought to be given to the conduct of these people after they came on board the "Hill;" but the legitimate effect of the testimony is to show that the man at the wheel of the "Western World" was drunk when the collision occurred. This accounts at once for the extraordinary course he navigated; and in spite of the *white-washing* that has been so liberally applied to him, there can be no doubt that he was reckless and dissipated, and wholly unfit to be trusted with the lives and property of his fellow men.

Undue importance has been attached to the statement made by Lawson, that he could not see the shore because there was an awning around the guards of the "Hill." It was very easy to lift up this awning. At all events, it did not prevent Lawson from seeing the light of the "Western World," nor did it obstruct the view of those who were on the hurricane deck of the "Hill." There was no awning, or any thing else in the way, to prevent Hatcher's seeing the "Western World," or McNairy or Jennings: and although Lawson says he did not see the "Western World" until after the collision, he distinctly says that he saw a light, which he observed all the time afterwards until it proved to be the "Western World;"

and that it approached quartering from the starboard side.

So, McNairy, when he went out forward, before the collision, was able to see the "Western World" approaching, and also to see the timber on the Arkansas shore, by which he knew certainly that the "Hill" was receding. It was very natural that he should endeavor to ascertain which was the nearest shore, and the distance as well as he could. He had been induced to go out by the remark of a fellow passenger, that there was another boat running into the "Hill." As soon as he got out, he saw that the danger was imminent; and it was important to him to fix definitely the direction to the nearest shore, in the event of the sinking of the "Hill," and of his being compelled to swim for his life.

All men are not equally blessed with the faculty of vision; and the fact that Gerard says he could not see the Princeton bar; or that Bell, when he came out on the hurricane roof of the "Hill," could see nothing but the point ahead on the Arkansas shore, is no proof that McNairy did not see the timber on the Arkansas shore. Blois says there was a light on the shore at Johnson's; and the effect of this light on Bell's eyes would have prevented his seeing objects in a different direction, which might have been perfectly visible to McNairy, who was not looking at the light.

Fletcher says: "Both shores showed very plain at the "time of the collision. A man whose eyesight was "good could have seen the Arkansas shore from the "deck of the 'Hill' at the time the collision occurred. "I could see it." R. 15.

Henry, carpenter of the "Western World," says: "The shores on both sides were visible plain enough." R. 75.

Evans says it was not so dark any time that night that he could not see both shores from the middle of the river. R. 81., answer to 11 Int.

Blois says: "At the time the collision occurred, I "could see both shores. There is timber on the Ar- "kansas shore opposite the place at which the collision "occurred. On the Mississippi shore there is a large "plantation, and the timber is probably a mile or so "back outside the plantation. Could see that timber "plain." R. 21.

Why doubt, then, that McNairy saw the timber on the Arkansas shore, and was able to determine, by observing it, that the "Hill" was receding? Or that Jennings, when he came out immediately after the collision, was able to see that the "Hill" was near the Arkansas shore?

Some of the witnesses assume that the collision must have occurred on the Mississippi shore, because the "Hill" landed on that side after she separated from the wreck.

But Gerard says, after he came alongside of the "Western World," he called out to Captain Newell to have a line got out quick, so that he might go ahead to keep from drifting aground. "He then went ahead on "the 'Hill' to run the 'Western World' over to the "Princeton bar; but was so close in on the Arkansas "bar that he could not get her over to the Princeton

" bar, R. 98." Of course this would take the boats over toward the Princeton bar, and bring them within the influence of the current, which sets over from Johnson's to the Princeton bar, and along down the bar. It would not be very easy to tell exactly where the " Hill " separated from the wreck; and while the boats were still together, according to Evans, when they had gotten down about opposite the foot of Princeton bar, they were three hundred and fifty yards off from the bar. Of course, she must have gone ahead on her engines to make the landing below the foot of Princeton bar, and did not drift from the point of collision to that landing without the aid of steam, and by the mere force of the current, as some of the witnesses seem to suppose.

It may be asked why, if the collision occurred near the Arkansas bar, Gerard should attempt to run the "Western World " over to the Princeton bar. The " Western World " was lost beyond hope. He intended to stay by her as long as any good could be accomplished, and there was no reason why he should risk grounding the " Hill " by permitting her to drift down upon the Arkansas bar, when every means had been taken to save the lives of the persons on board, when the " Hill " was alongside in actual contact with and attached to the " Western World " by a line, and had a plank out on her hurricane deck for the passengers and crew to escape on. Whether it was necessary or not, whether it was prudent or not, for Gerard to run the " Western World " over to the Princeton bar, it is wholly immaterial to inquire, since an error in this respect, after the collision, could in no manner affect the rights of the parties.

It is abundantly proved that every effort was made to save the lives of those on board the "Western World;" and not one of her officers or cabin passengers was lost, although the passengers were asleep, and were called up after the collision. The boats remained together long enough for every body on board to have escaped to the "Hill"; and those who were lost were deck passengers, who were probably drowned by the first rush of water after the collision, on the lower deck where they were sleeping, before the boat capsized. It was Gerard's duty to remain by the wreck, as he did do; and if he thought the safety of his own boat required him to go ahead and keep off the Arkansas bar, when in point of fact it was not necessary for him to do so, such an error could not impose any liability on the Appellants.

I conclude, therefore, that the testimony establishes the theory of the Appellants, and that it is wholly inconsistent with the theory of the Appellee, and with any right of recovery on his part.

If, however, the court should not concur in the views which I have thus presented, and should conclude that Appellants are responsible for the collision, it will be necessary to inquire as to the correctness of the assessment of damages. The first question arising on this branch of the case is: Does the proof authorize the amount allowed to libellant as assignee of the underwriters of the cargo?

In the libel he claims $25,000 as the amount of the assigned claims. The commissioner allowed $26,650, on account of these claims. I respectfully submit that he was not authorized to go beyond the amount fixed in

the libel; and, if more was proven, that it was his duty to have disregarded the excess.

The several assignments contain the following clause: "This assignment is made without recourse on said In- "surance Company, and is only to embrace the liability "of said steamer 'H. R. W. Hill' and owners, after "deducting any portion of said cargo which has been or "may be recovered from said wreck." R. 180 to 183, inclusive.

The commisioner treated the assignments as absolute, and took the whole amount insured as the basis of estimation. No proof was offered of the quantity or value of the goods recovered from the wreck. It is evident that a large quantity of the cargo must have been saved. Mathis, the bell-boat man, a wrecker by profession, says he was employed by Capt. Brothers, of the Home Mutual Insurance Company, to go to the wreck and take charge of it. This was in December, 1852, a few days after the collision. R. 88. "Capt. Eaton, agent "of the St. Louis Underwriters, also employed me at "Lake Providence to take charge of the wreck for those "he represented." R. 90. He mentions that he found cargo on both sides of the river, between the point of collision and the place at which he found the wreck; but he does not say how much.

Angell, who was a diver, employed by Mathis, was at work at the wreck for several months, from January to July, 1853; and was in all parts of the boat getting out the cargo. R. 143.

Latham, also a wrecker, visited and examined the

wreck on the 7th November, 1854. He found the machinery of the boat all there. So, Mathis must have been engaged, all the time he was working at the wreck, in getting out the cargo.

The testimony of Stillwell, R. 173; Kennett, 173–4; Engler, 174; Henning, 175; Ulrici, 176; Kercheval, 177; and Ames, 180, shows that there was among the insured goods, embraced in the assignments to libellant, a quantity of alcohol, raw whiskey, lard, pork and bacon, insured at a valuation of $18,615. These articles would be but little damaged—some of them not at all, by being under water; and the wreckers must have found it a profitable business, or they would not have remained at work at the wreck from January to July.

I respectfully submit that it was incumbent on the libellant to prove the damage caused to the Underwriters, his assignors, by the collision. By the very terms of the assignments, he could only claim the amounts insured less such portions of the cargo as were recovered from the wreck. The Underwriters could have claimed no more than their actual loss, which would have been the difference between the amounts insured and the value of the cargo saved; and their assignee certainly could claim no more than his assignors.

The fact that some portions of the cargo were saved by the agents of the Underwriters, is conclusive against libellant's right to recover the whole amount insured by his assignors; and it was his business to show with certainty how much of that amount he was entitled to recover under the assignments.

The commissioner also allowed for freight realizable on the voyage, $2600; for passage money, $650; and for cash lost in the safe of the "Western World," $2100. The proof of these several items depends solely upon the testimony of Fulton, which has already been sufficiently discussed. He does not fix amounts with certainty; and so far as the money in the safe is concerned, the testimony of Smith, Hill, Jennings, and McNairy, referred to in a former part of this argument, in connection with that of Fulton, shows conclusively that there was ample time to have saved any money that may have been in the safe; that the clerk, Murphy, did save and bring on board the "Hill" an armfull of books, and that he stated, in answer to an inquiry by the clerk of the "Hill," as soon as he came on board, that there was no money in the safe.

The earning of the freight and passage money depended on the performance of the voyage; and I submit that this was a contingency too uncertain to warrant the allowance of these items as loss and damage to libellant.

The valuation of the boat, $25,000, seems to me excessive. She was built in 1847, and was five years old when she was lost. Her first cost is not proven; but it could not have exceeded $30,000. Miller, who built in the same year (R. 186), and Withenbury (R. 164), fix the cost of building hulls at $13 per ton; and Miller says the cost of the hull of his boat—a very finely finished passenger and freight boat—was about one-sixth of the whole cost. Sparhawk, an inspector at St. Louis,

says—R. 66—that the tonnage of the "Western World" was originally 338 tons, which would give about $5000 for the cost of hull; and, allowing that she was as finely finished as Miller's boat, her whole cost would have been about $30,000.

In the summer of 1850, the "Western World" was cut in two and lengthened about 60 feet, and her tonnage, according to Sparhawk (ans. to 2d cross-int., R. 66), increased to 533 tons. Withenbury thinks the increase in her capacity, fully 300 tons, by being lengthened, made up for the depreciation caused by her running for a year or two. He adds: "I do not know how long she had been running." R. 163.

Robertson, a steamboat inspector, says the effect of lengthening a boat would be to increase her capacity: but that the ultimate effect would be injurious. He adds: "I have never seen one lengthened that was run "any time without being 'hogged.'" R. 183.

Smith confirms this statement, R. 185. He says: "She may have been made a better business, carrying "boat, but she cannot have been stronger and more "valuable, worth more as a boat, than when she was "built." At page 186 he says: "Lengthening does not "add to the lifetime of a boat. I am not of opinion that "the adding of clamps and extra fastenings necessarily "increases the strength and value of a boat, as the extra "weight thus in her counterbalances the benefit com- "pletely of a boat lengthened."

Miller, a steamboat owner and captain since 1840, says: "The lengthening of a boat has no effect on her dura-

"tion; the old part of her wears out just as quick as it "would have done without the lengthening, and proba- "bly quicker." R. 187.

These three witnesses fix the average duration of Western steamboats at five years. Robertson says: "At five years old, steamboats are generally worn out; "there are a few exceptions, and very few. The boilers "are generally worn out in five years. A boat of that "age would be very well sold if she brought the cost of "her machinery." R. 183. At page 184, he says the cost of machinery is fully one-third of the entire cost of the boat. He fixes her value, in December, 1852, at $12,500; and this estimation is made upon the hypothesis that she cost, originally, $33,000.

Miller and Smith say she could not have been worth, at the time she was lost, more than $15,000.

Shaw, who was also an inspector, made a survey of the "Western World" in June, 1852. She was in a seaworthy condition, but needed overhauling. He thinks she was then about four years old, and worth from $15,000 to $18,000. R. 147.

Smith says that a boat at five years old must have depreciated fifty per cent. R. 185. Miller says the depreciation for the first three years is about twenty per cent. per annum. R. 157. And Hyde, a witness for libellant, says that the depreciation of a boat in her fourth year, in general, is very considerable—about fifty per cent. R. 166.

Withenbury says he thinks he was on board the "Western World" at Cairo, in 1852, once. R. 164. He

was engaged in a different trade, and had not the same opportunities of seeing the boat as Miller; and Montgomery says he did not see the "Western World" at any time during the year 1852. R. 162.

Miller says: "I noticed her appearance frequently "after she was lengthened; met her frequently, and re- "marked that she was very much hogged; that she did "not keep her shape." R. 187.

This witness is much more reliable on this point than any of the others; because he saw her more frequently; met her when she had her cargo on board, and when the hogging would be more easily perceived than when she was moored at a wharf. He speaks also in reference to the condition of the boat during the year 1852; whereas, Montgomery did not see her during that year; and Withenbury does not say certainly that he saw her in 1852. These two latter witnesses, therefore, when they speak of the effect of lengthening, are to be understood as referring to a period shortly after the lengthening; and Montgomery says he saw her in November, 1850, at Louisville, when she had about 150 tons of freight on board. R. 161. He was on board of her several times in 1851, but made no examination of her. R. 162.

Assuming the original cost of the boat to have been $30,000; allowing that the depreciation previous to the lengthening was compensated by her increased capacity, and that she was as good as new after the lengthening, which is not the fact, the usual depreciation, up to the time of her loss, would have reduced her value at least

fifty per cent., and she could not then have been worth more than $15,000.

The commissioner bases his estimation upon the hypothesis that she cost $33,000, and he fixes her intrinsic value at 19,800. But if she had depreciated fifty per cent. her value would have been only $16,500. He thinks her value was enhanced by the business season upon which she had entered. But it seems to me that this is a consideration which cannot be allowed to enter into the valuation. She might have lost money during the remainder of the season; and if this collision had not happened, it cannot be assumed as a certainty that she would not have been lost by some other casualty or peril of navigation.

I trust that a thorough examination of the whole case will lead the court to the conclusion that libellant is not entitled to recover anything. But if the court should arrive at a different conclusion, I respectfully submit that the proof does not make out a worse case against appellants than one of divided responsibility; that the amounts claimed by libellant as assignee of the Underwriters, and for freight, passage money, and money lost on board, should be rejected; and that the recovery should be limited to such sum as the court may determine to have been the fair value of the boat at the time she was lost.

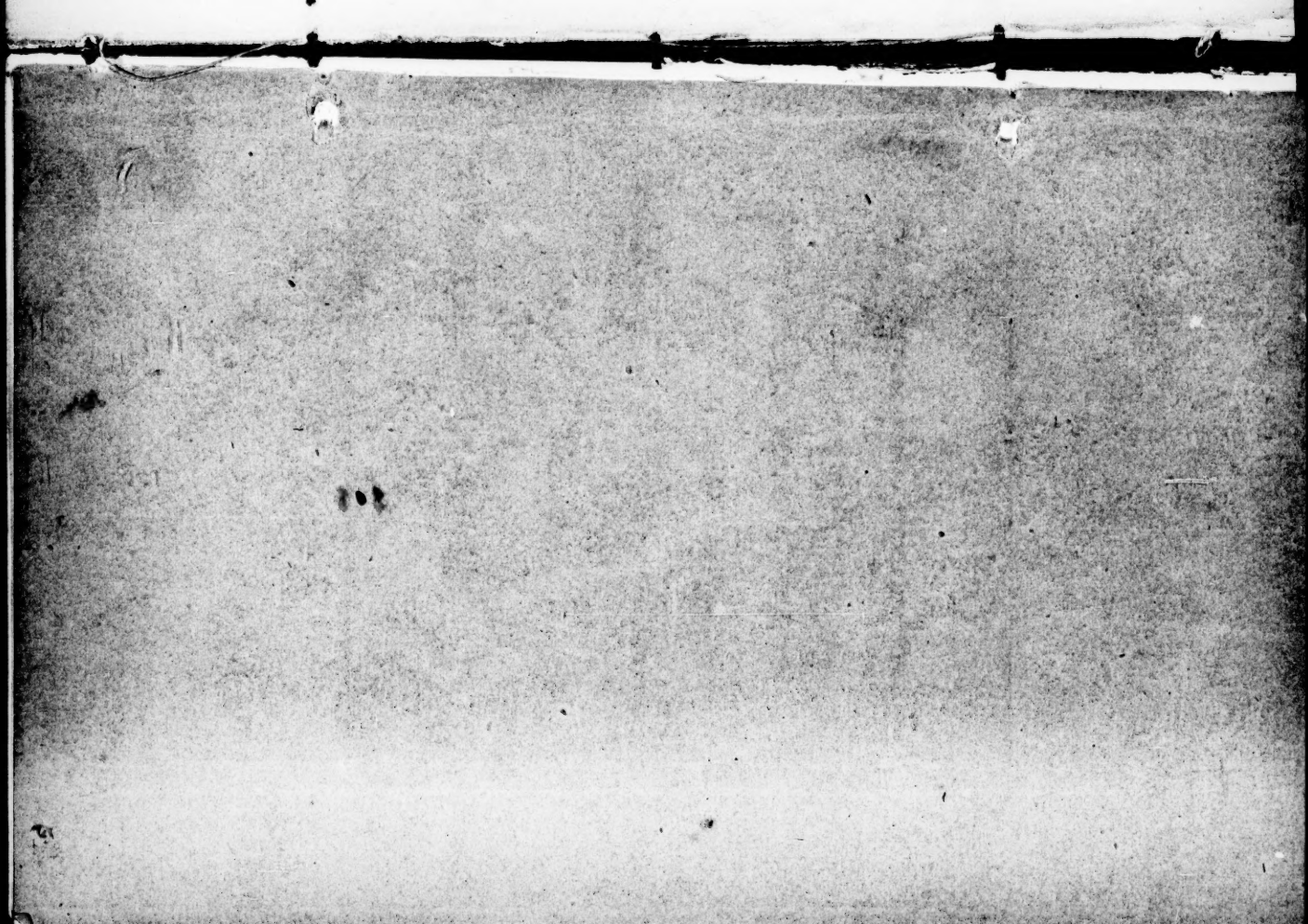
The importance of this case, the number of the witnesses, the contradictory character of the testimony, and the impossibility of discussing fully, in an oral argument, all the questions arising in the cause, will be

deemed, I hope, a sufficient apology for the length of this argument. In commenting upon the testimony, I have not been able to avoid some repetitions, for which I crave the indulgence of the court. My object has been to aid the court in arriving at a knowledge of the facts; and I only regret that my capacity has not been equal to my wishes in this respect.

~~R. H. MARR,~~
~~For Appellants.~~

New Orleans, February, 1861.

James Sheed
Henry Ashton
for Appellants



Supreme Court of the United States.

No. 9

THOMAS R. NEWELL, ET AL., CLAIMANTS, &C., APPELLANTS,

vs.

ALEXANDER NORTON, LIBELLANT.

J. M. CARLISLE,
JNO. D. McPHERSON, } *For Appellee.*

McGILL & WITHEROW, Printers and Stereotypers, Washington, D. C.

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THOMAS R. NEWELL, ET AL., CLAIMANTS, &C., APPELLANTS,

vs.

ALEXANDER NORTON, LIBELLANT.

This is an appeal from a decree of the Circuit Court of the U. S. for the Eastern District of Louisiana, in Admiralty, affirming the decree of the District Court in a case of collision on the Mississippi river, between the steamboats H. R. W. Hill and Western World, which awarded libellant damages for the loss of the World and her cargo.

There are two classes of questions to be considered—the first, respecting alleged errors in the proceedings; the second, as to merits of the case.

The libel was filed by Alexander Norton, on the 12th day of March, 1853, setting forth (Rec., p. 1:)

1. That he was the sole owner of the Western World on the 14th of December, 1852.

2. That said boat was then on a voyage from St. Louis to New Orleans, laden with a valuable cargo.

3, 4, 5, 6, 7. That she was lost, with her cargo, by collision with the Hill, and solely through the fault of the Hill, in the manner and under the circumstances set forth.

8. That the libellant had since received the transfer of large claims for the value of part of the cargo so lost, amounting to $25,000.

9. That the boat, at the time of loss, had a large number of passengers, a large freight list, together with stores and money; all of which passage money and other money, freight and stores, were lost, amounting to $7,000.

10. That the boat, machinery, &c., were worth $25,000; and that the entire loss of boat, machinery, cargo, passenger money, freight, stores, &c., amounted to $57.000.

11. That he had a lien on the steamboat Hill, and a personal claim against her owners, captain, and pilot then on duty for the value so lost.

And he prayed process *in rem* against the Hill, and citation *in personam* against the captain, owners, and pilot.

Process was issued March 12th, and on the same day the steamboat was seized and notice given by publication. (Rec., p. 3.) On March 15th, the owners, of whom the master was one, filed their claim. (Rec., p. 4.) On the same day the steamboat was released on a bond, conditioned that the claimants and sureties should abide by all the orders of the Court, and pay the libellant the amount awarded by the final decree. (Rec., p. 5.) On the same day the said claimants filed an exception to the libel for misjoinder of owners and pilot in a proceeding against the vessel and master, and prayed that the libel be dismissed. (Rec., p. 6.) The Court ruled that an action against the owners and pilot could not be joined with the proceeding *in rem*, and that the libellant must elect which remedy he would pursue; and he having elected to proceed *in rem* against the steamboat, and *in personam* against the master, it was ordered that the libel be dismissed as to the owners and pilot, and sustained against the steamboat and master. Proofs were then taken and a decree made in favor of the libellant. (Rec. p. 152.)

On appeal, it was insisted before the Circuit Court that the libel should have been dismissed; but the objection was overruled by that Court (Rec., p. 302,) holding that the defect in the libel had been cured by an amendment under an order of the District Court, which the Circuit Court would not review.

It is now insisted for the claimants, that in this the Circuit Court erred and the following points are suggested:

That it is only by the rules of 1845 that the libellant could join the remedies *in personam* and *in rem* in the same libel, and that he must pursue the textual provisions of the rules in order to bring himself within the limited powers of a court of admiralty. (Brief, p. 3.)

That by sustaining the libel against the steamboat and master only, the Court changed the obligation of the sureties, which was to satisfy such decrees as might be rendered upon a libel on which no valid decree could be rendered, into

an obligation to respond to a decree to be rendered on a new libel, freed from the objections.

And, in conclusion, the claimant's brief cites Story's Eq. Plead., § 271 and seq., where the rule against multifariousness is stated.

Now, this libel is certainly not multifarious within any ordinary definition of the term; that is, the libel in this case states one single cause of action and seeks one single measure of relief. And it is a test of this, that if any one of the defendants should satisfy the demand in the libel set forth against him, it would be a satisfaction of the whole cause of action.

The objection for multifariousness is explained more fully in that part of the argument for the respondent, (Brief, p. 28,) where it is said that the libel proceeds, partly upon a tort with regard to the loss of the steamboat, and partly upon a contract in regard to the assigned claims for the loss of the cargo. It need hardly be stated that the assignments mentioned in the libel are no part of the cause of action. The cause of action is the marine tort—the trespass committed by the respondents—and that alone.

The real defect of the libel was in making parties of persons who could not be made liable in that form of action. It was a misjoinder merely, as correctly described in the exception, and so a defect of form within the provisions of the 24th rule in admiralty. What, then, should have been the ruling of the District Court? The claimants say to have dismissed the libel as to all the parties. But this court said, in the case of the schooner Adelide and cargo, (9 Cr., 244:) "When merits clearly appear on the record, it is the settled practice in admiralty proceedings, not to dismiss the libel, but to allow the party to assert his rights in a new allegation." And so Parsons, in his Admiralty Practice, says: "Motions, petitions for adding or *subtracting parties*, for distribution, sale, or any incidental purpose, are received by the court with great freedom. * * * The rules of the court seldom interfere with proceedings of this nature; and it may be said that they are always admitted where substantial justice requires them." (Pars. Ship Ins. and Adm., v. 2, p. 716.) So in equity: "If any necessary parties are omitted, or unnecessary parties inserted, the court, upon application, will permit the proper alteration to be made, upon terms according to the nature of the case." (Sto. Eq. Pl., § 885.) In the Attorney General *vs.* Wood, (2 Young & Jarvis, 290,) upon a motion to strike out a plaintiff, and

make him a defendant—certainly a very extreme case—the court said it was "a mere question of expediency and convenience," and allowed the motion, because it would save the expense of bringing a new suit, and because "every purpose of justice seemed best answered" by that course.

So in a late case in this court, the Commander-in-Chief—a collision case—(1 Wallace, 352,) the court said: "*Objections to parties*, or for want of proper parties, should be made in the court below, when amendments may be granted in the discretion of the court. *Parties improperly joined may, on motion, be stricken out*, and new parties may be added by a supplemental libel and petition."

But it is further objected, that by allowing the libellant to amend, or dismissing the bill as to certain parties, injustice was done to other parties—to the sureties: who, having agreed to abide the result of a libel which could not be sustained, have to abide the result of one which has been thus freed from objection. Precisely the same objection was raised in the case of the Harmony, (1 Gallis, 123–5,) and was answered by Mr. Justice Story, in language which could not be made more appropriate to this case. He said: "I will only add, that the objections made that it might affect the rights of the sureties, in the bond given for the property, have not been considered of weight in any cases at common law. When property is delivered on bond, it is too much to consider that the right of the court over it can be increased or diminished by that circumstance. Every person, so bailing property, is considered as holding it subject to all legal dispositions by the court. (4 T. R., 457.) *A fortiori*, the objection would, with great difficulty, find support in a court exercising admiralty jurisdiction."

To the further objection that the claimant, by joining the owners has failed to bring his case within the jurisdiction of a court of admiralty, it is difficult to frame an answer. The libel certainly sets forth a case of marine tort, with every circumstance necessary to determine the liability of the party alleged to have been guilty of the trespass charged in the libel. Parties, however, have been improperly inserted in the libel, and it is on this ground alone that the jurisdiction of the district court is denied. No authority is cited for the position taken, and we submit that none is needed for its refutation. We have already shown that the defect has been cured in a manner sanctioned by this Court in a recent case.

It being then established, as we conceive, that the libel was not to be dismissed, the next question was, who were the

improper parties, and how to get rid of them? The district court ruled simply that the libellant could not proceed against all whom he had made parties, and left it to himself to select those whom he would pursue. He made his election, and then the court made the order of March 19. (Rec. p. 6.) The circuit court considered this to amount, in substance to an amendment of the libel, and if it was, no question can be made to it here. (See Spencer *vs.* Apsley, 20 How'd 264; and Dan. Ch. R., 347; cited by Mr. Justice Campbell, Rec. p. 302.)

But it is contended for the claimants that the libellant did not in fact amend his libel. It is immaterial whether he did or did not. It was quite as regular to get rid of the improper parties by dismissing the bill as to them, as to accomplish the object by amendment. In equity a plaintiff may dismiss his bill as to any of the defendants at any time before answer without costs, and after answer with costs. (Dan. Ch. Pr., 927.) Or, a defendant being entitled to do so, may have the bill dismissed as to himself alone. (ib. 953.) Of course when it is said a plaintiff may dismiss his bill, it is meant that the Court will dismiss it on his motion or with his assent—as was done by the order of March 19, in this case. Thus, under whatever aspect the case is viewed, it was entirely regular to put the owners out of court.

The defect in the libel being thus cured, the cause was heard on the merits, and the decree being in favor of the libellant, the case was referred to the commissioner to assess damages, (Rec. 156,) and the commissioner reported in favor of the libellant for the full amount claimed. Exceptions were taken (Rec. 188,) but the report was confirmed for the full amount. (Rec. 190.)

In making his award, the commissioner, after proof made of the value of the cargo lost, admitted evidence to prove the assignments to the libellant of claims for that value. It was urged before the circuit court that those assignments were void, or that if valid the district court could not take cognizance of them. The circuit court ruled that as the libellant was the owner and master of the Western World, he was bailee of the cargo, and so responsible to the shippers or insurers for the safe transportation and delivery thereof, and to fulfil his obligations and secure his reward, he was entitled to possession, and might maintain an action for the destruction of it. (Rep. 302.) To this it is now answered for the claimants that the libellant was master of the boat only for a portion of the voyage, and had left the

boat at Memphis before the collision, and so was not master or bailee at the time of the collision. (Brief, p. 25.) But this objection mistakes the law and the meaning of the circuit court. As owner of a steamboat employed in transporting goods generally, the libellant was a common carrier and bailee, and liable to the shippers. (The Druid 1 W. Rob. 399; Jencks *vs.* Coleman, 2 Sumner, 221; 2 Kent, Com. 609; Angel's Law of Carriers, sec. 80.) In ~~Silliman vs. Hudson River Bridge Co.~~, 1 Black, 582, this Court said: "One of the objections was that the court erred in allowing damages for the injury to the cargo as well as to the boat, but the point has been so often ruled that the carrier who is responsible for the safe custody and due transportation of the goods may recover in cases of this description that we do not think it necessary to do more than to express our concurrence in the rule adopted by the circuit court."

In the subsequent case of the Commander-in-Chief, above cited, this court intimated that where the libellant was prosecuting for the benefit of other parties not named, as well as his own, it would be more regular that it should be so averred in the libel; still they overruled the objection for want of such an averment, observing that no inconvenience could result from the rule, as there was ample power in the court to protect the rights of shippers, who may intervene at any time before the fund is actually paid out of the registry. (1 Wall., 52–3.) In this case, the libel shows that there are no outstanding claims of shippers or insurers.

It is again objected (Brief, p. 25) that "if the right of action would otherwise have been in the libellant, it ceased by the abandonment to the underwriters;" that "the actual possession of the wreck, and the right of action for the loss of the cargo, were in the underwriters;" that "his right as bailee was derived from the owners of the goods; when they abandoned, their right ceased, and so did that of their bailee." No authority is cited for this position, and it may be confidently asserted that none can be found to sustain it. It amounts to this: that a bailor, by transferring his qualified right, conveys an absolute right to his assignees and defeats the lien of the bailee.

But all this defence, founded on the dealings between the libellant and the insurers or owners of the cargo, is fully disposed of by the ruling of this Court in the case of the Propeller Monticello *vs.* Matteson, (17 How'd, 152–5.) where, in reference to a similar defence, the Court said: "It is true

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that in courts of common law the injured party alone can sue for a trespass, as the damages are not legally assignable; and if there be an equitable claimant, he can sue only in the name of the injured party, whereas, in admiralty, the person equitably entitled can sue in his own name. * * * The respondent is not presumed to know, or bound to inquire, as to the relative equities of parties claiming the damages. He is bound to make satisfaction for the injury he has done. When he has once made it to the injured party, he cannot be made liable to another suit at the instance of any merely equitable claimant." * * * *

The occurrence out of which this suit arose was a collision between the H. R. W. Hill and the Western World, in a bend of the Mississippi river below the town of Princeton, Mississippi, on the morning of December 14, 1852. The Hill received no material injury; the World was instantly found to be in a sinking condition. The Hill came alongside and took off the crew and some passengers from the World, but before all could be saved, the World sunk, carrying down with her about thirty persons.

The account of the occurrence, given by the libellant's witnesses, is briefly this: That the World was descending the river in the ordinary channel, when the Hill, which had been running up on the Mississippi side, came quartering out from that side, attempted to cross the river in front of the descending boat, but, being a little too late, ran into her and sunk her.

The libellant accounts for the accident by showing that the pilot of the Hill failed, for want of proper watchfulness, to discover the World in time to avoid the collision; that he was either ignorant or disregardful of his obligations to obey signals which he ought to have obeyed; and that he manœuvred his boat with entire want of skill.

The respondent's witnesses admit an attempt of the Hill to cross the river, but say it was effected in safety, and that, after the Hill had gained the Arkansas side, the World came square across the river, directly towards the Hill, struck her, inflicting, however, no damage, but was herself by the blow stove in and sunk.

There were few witnesses to the occurrence except the officers of the respective boats. They give contradictory accounts of the immediate causes and manner of the collision, but they concur in many important particulars. Leaving out of view, for the present, their testimony, so far as they contradict each other, we proceed to examine such

facts in the case as these witnesses agree upon, or as are proved by other testimony.

There is no conflict of evidence as to the proper channel for the respective boats. The current of the river sets over to the Mississippi side, near Princeton bar, and descending boats keep in the channel; whilst ascending boats, seeking the still water, keep as near to the Arkansas shore as is safe. Phillips, a pilot of experience, says, that an ascending boat may run up Princeton bar; but having once taken the bar, should keep it, and under no circumstances attempt to cross in front of descending boats. All the testimony, however, shows that it is not usual for boats to run that bar unless they have a landing to make at Princeton, above the bar, as they lose distance; and all the officers of the Hill testify that her proper channel on this occasion was on the Arkansas side. (See appendix to this brief, B.)

It is certain, we think, and not denied, that the Hill was a few minutes before the collision on the Mississippi side, and attempted to cross in front of the descending boat; Gerard, her pilot, testifies, (Rec., p. 97,) that "he came on watch at 4 o'clock a. m., at the foot of Princeton bar, [and kept in sight of the bar,] until he came to a low place in the bar, when he saw the light of a flat-boat, and sheered over towards the Arkansas bar." Was it in executing of this manœuvre that the collision occurred? So the libellant affirms, and a number of independent facts conduce to prove that this was the case.

The first piece of evidence is the testimony fixing the position of the two steamboats shortly before the collision. (See appendix to this brief, A.) The officers of the World testify generally, that when they were off Johnson's, they saw the Hill in the bend below the foot of Princeton bar, fifteen minutes before the collision. That distance is proved to be two miles, or more. (Rec. p. 152) Princeton bar begins below Johnson's, and is on the Mississippi side. The officers of the Hill, with one exception, testify that they did not see the World more than five minutes before the collision. (Rec., p. 110–1,) and so do not contradict the officers of the World as to the position of the boats ten minutes earlier. The exception just referred to is that of Ichabod T. Hill, watchman on the Hill, who testifies that he saw the World fifteen minutes before the collision, and two miles distant, (Rec., pp. 100, 114.) and that she then showed on the larboard side of his boat. This being so, he must have been in the bend below Princeton bar, where only the larboard side of

the Hill looked up stream. (See map.) He says, indeed, that the World was then above Arkansas Point, and the Hill had crossed over to the Arkansas side. But in this particular he contradicts all the evidence for the respondents, who labor to show, and do show, that after the Hill sheered out from Princeton bar, the World showed only to the starboard of the Hill, and accordingly their counsel attempts to discredit his own witness on this point. (Brief, p. 88.) But leaving out this witness's testimony as to the *factum probandum*, all the rest of the facts and circumstances testified to by him are not only consistent with, but corroborate and sustain, the testimony of the officers of the World. Flemming, the pilot of the Illinois, testifies that his boat was ascending the river, and met the World off Johnson's, and at the same time he saw the Hill down the river. He indicates the position of the Hill by marking it [Y] on a map, which unfortunately has been lost, but not before it had been proved that the point marked [Y] on the map was $2\frac{1}{2}$ miles below Johnson's. (Rec., p. 152.) Now it is proved that the Hill was making up stream about five miles an hour, and the World down stream at least ten miles an hour. It is manifest, therefore, that, if the boats continued at that speed, the place of collision must have been ten-fifteenths of 2 or $2\frac{1}{2}$ miles; that is, $1\frac{1}{3}$ or $1\frac{2}{3}$ miles below the position of the World when the boats were 2 or $2\frac{1}{2}$ miles apart; and this would locate it opposite the lower part of Princeton bar, where the libellant alleges it occurred. And Flemming testified that when he heard of the collision he supposed, from the position in which he had seen the two boats, they must have come together about that spot. (Rec. p. 24.)

An attempt has been made to discredit Flemming on this point, because he says he does not know the distance between the boats, or their speed; and, how then, it is asked, could he know where they would meet? We answer, that to determine where they would meet required not knowledge of an absolute distance or absolute speed. If one ran twice as fast as the other, they would meet in one-third of the distance of the slower boat, whatever that distance and whatever their speed; and Flemming had only to know that the descending boat was moving faster than the ascending boat to be able to swear, as he does—that they could not possibly have met where the respondents say they did.

The place where the respondents allege the collision occurred is, according to the map, about a half a mile or less below Johnson's, and therefore three or four times nearer the po-

sition of the World off Johnson's, than to the position of the Hill below Princeton bar; and consequently the Hill, to have reached that point, must have run three or four times as fast up stream as the World did down stream. (See appendix to this brief, L.) Phillips, an old and experienced pilot, who knows the locality and the currents, and had the map before him on which the positions of the two boats were laid down, testifies (Rec., 93) that "if a descending boat were about Johnson's Point, and an ascending boat at about the place marked [Y] on the map, they could not in the usual course of things come together at, or about the head of the Arkansas bar; and on that side of the river so as to be in danger of collision. The ascending boat would have five times as far to run as the descending boat." So Flemming testifies that before the Hill could have reached the alleged place, the World would have been below it, if she had only floated with the current; and that to have met the Hill there, the World must have rounded to and come up the stream. He says he told this to Newell, the captain of the Hill, and he replied that in fact the World did so. (Rec. p. 26.)

The next independent fact is, that a few minutes—not more than ten minutes—after the collision, the boats are proved to have been at the foot of Princeton bar, near the Mississippi shore. (See appendix to this brief, I.) How did they get there? The brief for the respondents suggests that the Hill pushed the World across the river. There is no evidence whatever to support this theory, but a single expression in Gerard's testimony, which, however, does not bear it out. After detailing the circumstances of the collision, he says he brought the Hill alongside the World and "then went ahead on the Hill to run the Western World over to the Princeton bar, but it was so dark on the Arkansas bar that he could not get over to the Princeton bar. It was so dark that he could not see the bar, nor the timber on the bend, until the Hill *had drifted close into shore*, below Princeton bar." (Rec., p. 96.) Now, it is proved that the World sunk in a very few minutes after the Hill got alongside of her—so soon that the passengers had not time to escape from one boat to the other; and, during that time, the boats were side by side, heading in opposite directions, and the World was upheld solely by her starboard guard having caught on the guard of the Hill.

In this position, by so slight an attachment and in so short a time, it would have been impossible for the Hill to have moved the World to any perceptible distance, (Mathis, Rec.,

p. 91,) even if an attempt had been made, as Gerard says it was; but no other witness says it was, and the witnesses about to be referred to, say that, after the collision, the two boats drifted, without other motion, down stream.

But why should Gerard have attempted to push the World across the river? He was already, by his own account, in shoal water, and comparatively still water, where the World could have sunk with the least danger of loss of boat, cargo and passengers. This he must have felt instinctively. The fact could not have failed to occur to him. Why, then, did he seek to push the World over into the deep and rapid current? The only answer is, that no such attempt was ever made. If the idea ever occurred to him to push the World towards Princeton bar, it was because it was the nearest land.

A third independent circumstance given to determine the place of the collision, is the fact that it occurred in the immediate vicinity of two flatboats, whose place is fixed by other evidence.

Gerard, the pilot of the Hill, says, in his testimony, (Rec., p. 96,) that when he was running up Princeton bar, he saw the light of a flatboat, and sheered over to the Arkansas shore. Three of the men who were on that flatboat have been examined. They testify, in substance, that they witnessed the collision; that their own boat was in the channel of the river, near the Princeton bar, on the Mississippi side [in the usual channel for flatboats, and where Gerard says he saw them;] that the two steamboats, when they came together, were still nearer the Mississippi shore than the flatboat; that, before the collision, the World had backed her engines and stopped her headway, and was floating with the current; that the Hill ran into the World, and that the two boats then lay close together, floating down stream for five minutes, or about that space of time, when they parted and the World turned bottom up. (Evans, Rec., p. 79; P. Ray, p. 247; W. Ray, p. 254.) Evans only was examined while the case was before the district court; the Rays were not found and examined till after the case was before the circuit court. The fatal effect of Evans's testimony was perceived by the respondents, and strenuous efforts were made to discredit him. Seven witnesses were called to impeach his character, (Rec., pp. 262–269. See Appendix to this brief, O;) but four of these had never heard his veracity questioned, and two only could be brought to swear they would not believe him on oath. On the other side, twenty-eight witnesses

sustained his character for veracity; most of them had known him for long periods—were his neighbors and friends—and testify that they would believe him under any circumstances, and without hesitation. (Rec. 206 and seq. See appendix to this brief, O.)

An effort is made to discredit him, by showing that he told one Porterfield that he would be a good witness for the Hill, for she was in her proper place, and requested as a special favor that his name and address might be taken. Whatever might then have been Evans's opinions as to the merits of the case, he stated facts to Porterfield just as he states them in his testimony in this case; for Porterfield testifies, (Rec., p. 274,) that Evans told him that he was 100 or 150 yards from the boats when they came together; that the Hill was coming round Princeton bar, and the Western World was floating down without steam; which are all the material facts testified to by him in this cause.

Both the courts below gave full credit to this witness, but the respondents still contend that he and his companions were not near the scene of collision, and are utterly unworthy of credit. These men could not be mistaken as to their own boats being in the channel of the river, or as to the facts of seeing the steamboats come together, of seeing the cargo of the wrecked boat floating around them, and of picking up some of that cargo. If then the collision happened near the flatboats, we know on which side of the river it must have been. The World might possibly have pursued the Hill into the still water on the Arkansas side, but it was physically impossible for the flatboats to do so; and moreover we have the testimony of Gerard himself, that the flatboats were on the Mississippi side.

A fourth independent and distinct fact is the manner in which the boats came together. (See Appendix to this brief, H,) A strenuous effort is made by the counsel for the respondents to show that the World struck the Hill, and not that the Hill struck the World. It is a matter of no consequence in itself whether the Hill by mismanagement threw herself before the World, and thus caused her destruction, or ran into her, and thus effected the same result. But the latter view accords with the other circumstances of the collision stated by the officers of the World, and the evidence establishes its truth. This appears first from the extent of the injuries to the respective boats. The Hill was not in the slightest degree disabled; she proceeded on her trip up the river, and it was not till her return to New Orleans, the 4th

of January following, and three weeks after the collision, that even a survey was held on her. (Rec., 146.) On the other hand, the injury to the World was sufficient to sink her in a few minutes. Her timbers were driven in; a large hole was made in her side, and she was cut down nearly to her keel. (Mathis, Rec., p. 90.)

It is contended by the counsel for the respondents that these injuries were the consequence of the staving in of the bows of the World when driven against the Hill.

To this hypothesis there are several objections. It does not account for the fact that the timbers of the World were driven in and broken off, and that a large hole was made in her side. But above all, it is contrary to all reason that a large, heavily-laden boat should strike another with vast force necessary to crush her own timbers, without inflicting any injury whatever beyond the merest scratch on her opponent.

It is moreover impossible that so slight an obstacle as the stem of the Hill should have afforded such resistance to the impact of the World, as to arrest her progress as suddenly and fatally as if she had driven upon a rock.

It seems to need no argument to prove that if the World had struck the stem of the Hill at right angles or nearly so, as the respondents claim she did, the stem would have broken off, or the Hill would have yielded, and the World would have glanced and passed with little or no injury. A slight force applied to the extremity of the long hull of that steamboat would have sufficed to turn her to the slight extent necessary to allow the passage of the colliding vessel.

When the two boats came together, the blow which each received had the same force. The respondents ask this Court to believe that this force was expended upon the stem of one boat at right angles to its line of attachment to the vessel, and therefore in the line of least resistance, and that it sufficed only to bend the stem band very slightly to the left, and to split the stem; while upon the other vessel the same blow, received in the direction of the length of her timbers—her line of greatest resistance—entirely demolished her bows. The World is proved to have been staunch, sound and strong, and remarkably well fastened. (Rec., p. 89,) and the hypothesis which attributes her destruction to a cause so slight cannot possibly be true.

Some attempt was made by the respondents to show that the World received the fatal injury on her starboard. (Rec. p. 149.) This contradicts the theory of the respondents, not less than that of the libellants. Gerard called

Farnsworth to witness that the World's larboard lights were in full view from the starboard of the Hill, and both he and Farnsworth testify to that fact; and in accordance with it, that the World struck the Hill on the starboard side of her stem, and consequently had her larboard side to the Hill. If the injury then was on the World's starboard side, it must have been inflicted by some other agent than the Hill. So important did the respondents consider this point, that they had the stem of the World brought into court with some planks attached, and a shipwright was produced to swear that the injury was on the starboard side, but on carefully inspecting the timbers, he confessed himself mistaken, and testified the injury was on the larboard side. (Marcy for respondents, Rec., p. 148. See Appendix to this brief, H.)

Two other facts are not less significant. A quantity of the cargo dislodged from the World floated ashore on the Mississippi side, just below the Princeton bar, shortly after the collision, and some cattle, that were thrown from the sinking boat, also landed on the same side. (See Appendix to this brief, K.) The argument for the respondents suggests, (p. 80,) that the wind may have blown the freight across the river; and as to the cattle, that they followed the boat, on which they had passed some days, (and for which it is to be presumed they had contracted some local attachment,) until she sunk, and then had followed the Hill, which made a landing below Princeton bar to put ashore some of the wrecked passengers.

It is almost needless to say, that these are the merest improbabilities, unsupported by a tittle of evidence as to the force or direction or the existence of any wind at the time, or as to any such manifestation of sentiment, as is attributed to the cattle on the occasion in question. The evidence for the libellants is that the cargo could not have landed where it did, if it had not been put afloat near Princeton bar. (See Appendix to the brief, K.)

Having thus shown, as we think, that the collision occurred through the fault of the Hill in crossing the river at an unusual place, and in front of a descending boat, we proceed to expose some grave faults on the part of the officers of that boat, which rendered abortive the prompt and well-timed attempts of the officers of the World to avert the catastrophe.

The first of these was the insufficient watch on board the Hill. neither captain nor mate appears to have been on the watch; and although the boats are proved to have been in

plain sight of each other at a distance of two miles, and for a period of fifteen minutes before the collision, every officer of the Hill, except one, declares he did not see the World more than five minutes before the boats came together, and when they were not more than half a mile distant from each other. (Rec., p. 100. See Appendix to this brief, C.)

A second failure to meet the exigencies of the occasion—perhaps the fatal error which rendered certain a misfortune which would otherwise would have been averted—is found in the disregard by the pilot of the Hill of the signals of the World.

The rule of the river was then much the same as at present. (Rec., p. 25. Opinion of the circuit court, Rec., p. 300.) On the approach of boats, either gave the signal indicating the side she meant to take, and the other was bound to accept it. At present the ascending boat is allowed choice of sides, if she indicates her choice within a reasonable time; and this rule is no doubt founded upon grounds of convenience recognized then as well as now; for Fletcher, pilot of the World, determined to give the Hill choice of sides, and deferred his signal as long as was prudent, and until within a quarter of a mile; when observing that the Hill did not signal, he tapped his bell once. (Bloys, Rec., p. 18. Gerard, Rec., p. 100.) This signal was answered by the Hill with two taps, and the World repeated her signal by tapping once. There is a conflict of evidence as to whether the Hill again answered the World's signal. The officers of the World, who were on watch, say she did; the officers of the Hill say she did not, except one, Irwin, the mate of the Hill, who says he heard the two taps a second time, (Rec., p. 140,) and he can hardly be mistaken, for being in his berth, and not aware of the approach of a boat, he says he heard, but misunderstood the signal the first time, and only on hearing the Hill's signal again, understood that they were about to meet a boat. (See Appendix to this brief, E.)

We pause here a moment to inquire why Gerard crossed the signal of the World. The reason is apparent enough if he was about to cross the river in front of the World; he was about to run towards the Arkansas shore; and he wished not to go back, but to apprize the World of his intended course and to pursue it. But if he was already on the Arkansas side and running up stream, the signal of the World indicated her desire to pass between the Hill and the Arkansas bar. What objection could Gerard have had to this? He says he objected, because he was already near

the bar. Being already near the bar might be a valid objection against going nearer; but he was not requested to go nearer to the bar, but to come out from it. Against that course he shows no ground of objection whatever, and we contend from the evidence on this point that his signal is only to be accounted for by the fact that he was crossing the river in front of the World, and confirms the testimony for libellant on that point. (See Appendix to this brief, D.)

The World, having the choice of sides by giving the first signal, had a right to presume the Hill would acquiesce in her choice, and could not apprehend any difficulty until the Hill had crossed the signal. The pilot of the World testifies that he backed his engines the instant that the Hill crossed his signal. (Rec., p. 13.) So testify substantially Bloys, his co-pilot, (p. 18,) Morgan, the first engineer, (Rec., p. 27,) Markall, second Engineer, (Rec., p. 69,) Fulton, the captain, Bougher, the mate, (p. 38,) and the flatboat-men. (See Appendix to this brief, F.) The Hill having determined not to acquiesce, first knew that there was to be difficulty, and should have stopped her engines as soon as she received the World's signal. This she did not do, but persisted in her course. (See Appendix to this brief, G.)

Gerard, the pilot of the Hill, says he stopped both engines as soon as he heard the signal from the World. (Rec., p. 97.) Connally, engineer, says that they were stopped after the Hill had answered the World's signal. Irwin, the mate, says it was not till after the second signal from the World had been answered by the Hill that the engines were stopped. (Rec., p. 140.)

The brief for respondents (p. 65) admits that the engines of the Hill were not stopped until after the second signal from the World, and justify the delay, because, says the brief, "it was not until the signal of the Western World was repeated that Gerard could have supposed that she would have continued the dangerous course indicated. By this time," it continues "the boats were very near together and the danger of collision imminent."

Gerard seems not to have understood the rules respecting signals. He says the World gave the wrong signal for a descending boat. (Rec., p. 109.) The evidence is that as the rule then was the boat which gave the first signal might give either signal, and take choice of sides. This misconception on his part perhaps explains his delay in stopping his engines.

There is the same discrepancy of testimony as to the backing of the Hill's engines. Men differ widely in the estimation of very short intervals of time. It is quite certain that all those signals and manœuvres occupied little more than 2½ minutes, or while the boats were passing the intervening space of a quarter of a mile. If the Hill had deferred stopping her engines until four signals had been made in succession, as Irwin asserts, or until three had been made, as the brief for respondents admits, the boats must indeed have been very near together. And Whistler, the engineer, testifies that when he began to back with the starboard engine, which was the first one backed, the World was not more than her own width (50 to 60 feet) distant. That is, the Hill was driving on with all her headway within 60 feet of the World, and then she backed one engine only—the starboard engine. The larboard engine may have been backed about the time of the collision, but not many seconds before it. Whistler, indeed, testifies, as do the other officers of the Hill, that she was backing at the time of the collision; and he says that whereas he first thought the World would strike the Hill about her boilers, the Hill backed so fast that the World struck only her stem. The story of these officers is that the World came on at full speed; so that we are required to believe that while the World, at full speed, passed over a space of 60 feet, the Hill, just starting to recede with a single engine, retreated 100 feet (for so far is it from the boilers to the stem) before the World could reach her. This is impossible. The simple fact is, that the World was nearly at rest, and the backing of the starboard engine of the Hill was not to back the boat, but to aid in turning her rapidly. Gerard had seen his error, and was attempting to recede when too late. He backed on the starboard engine only, and gave the boat the wheel to starboard with all the strength of himself and his companion, (Gerard, R., p. 96; Farnsworth, R., p. 100,) thus attempting to pass to the right, in too tardy obedience to the signal of the World. The head of the Hill, although thus turned up stream with all the force of the engine and rudder, struck the World not more than 10 feet from her stem, and it is manifest that, as Bloys told Gerard, if Gerard had pulled to larboard as hard as he pulled to starboard, the boats would not have come together. It is, no doubt, true, as Gerard said in reply to the remark of Bloys, that he was surprised when he heard the signal of the World, (Rec., p. 20,) and the unfortunate manœuvre was the result of his con-

fusion; but, in the brief of the respondents, this act of a confused mind is justified as a prudent measure of self-defence. "By this time," says the brief (p. 65,) "the two boats were very near together, and the danger of collision was imminent. The safety of the Hill, and the lives of the passengers, depended on proper manœuvring, instantaneously; and, while it was certainly Gerard's duty to avoid a collision, if possible, it was also his right, and his duty, to make the collision—if, in his judgment, it was inevitable—as little disastrous as possible to the Hill, by presenting to the blow the least vulnerable part." This admission, as well as the fact attested by both the pilot and both engineers of the Hill, that she backed with one engine only, is inconsistent with the simple design of backing the Hill, which could have been best accomplished with both engines. The design was to direct her course, and it was directed in a manner fatal to the safety of the World.

Against this evidence the respondents present only the testimony of the officers of the Hill, and of some passengers, swearing directly that the Hill was on the Arkansas side. We have commented slightly on the testimony of the officers. That of the passengers needs no comment; they were mostly from Nashville, where the Hill belonged, prepossessed in favor of their own boat, and against that which they were assured had endangered their own lives. They were startled from their slumbers by the alarm, and only one of them even saw the World before the collision. Their testimony contains little more than their opinions and inferences, which they state with a boldness, that destroys all confidence in the accuracy of their statements as to the facts.

There is one circumstance only which tends at all to show that the World went across the river towards the Hill, and that is the fact, that after the collision her head was pointing to the Arkansas shore. The pilot of the World says, she was knocked around by the blow of the Hill. The counsel for the respondents comments on the impossibility of a heavy boat being *knocked around;* and we may admit that a boat cannot be knocked, or tossed as a shuttlecock. But when the boats came together at a point so near their stems, if the bow of the World was merely held stationary in a strong current for a few seconds, her stern would swing round and place her in the position proved; but in addition to this, we are satisfied the Court will find from the evidence cited, that the Hill struck the World with a very considerable degree of force, which, combined with the action of the current, is ample to account for the position of the World.

We have seen that the theory of the libellant accounts for the collision, simply by supposing the World met the Hill a few minutes earlier than her pilot admits—met her crossing the river, and not after she had crossed it. But the theory of respondents requires on the part of the World a sudden and total departure from the course she is proved to have been pursuing; a departure so complete, that it could not have been the effect of mere carelessness, but must have been the result of design; and that design, the destruction of one or the other of the boats. This we proceed to show.

Off Johnson's, half a mile above the place of collision, as alleged by the respondents, the World is proved to have been in her proper channel, and passed and exchanged signals with an ascending boat—the Illinois (Flemming, Rec., p. 24;) and Gerard, the pilot of the Hill, says that when he first saw the World, five minutes before the collision, she was nearly square across the river, half a mile distant. (Rec., p. 100.) Then she was on her proper side of the river. He proceeds to say that she left the course she ought to have pursued and came square across the river, or nearly so, and directly towards the Hill. (Rec., p. 109.) It is to be remembered that both the World's pilots were on deck; one had, a few minutes before, taken the wheel, and the other, whose watch was over, was talking to him. Both had observed the Hill for the past fifteen minutes. The watchman, mate and captain were also on deck, and all had seen, and were watching the Hill. Under these circumstances, the respondents declare that the World left her course, not by a slight deviation, but at right angles, "coming square across the river," which she ought to have descended. The morning, though dark, was not so dark as to prevent the officers of the respective boats from knowing in what part of the river they were. This they all swear to. Nor can it be supposed that both the pilots of the World were ignorant of the proper course to steer at that point. Such ignorance has not been imputed to them by any one.

Two suggestions have been made by the respondents to account for this otherwise inexplicable conduct of the officers of the World; first, that they were a reckless set of men, particularly the pilot Fletcher, and were drunk at the time of the accident; and, secondly, that the World was insured to her full value, and was "well sold" when sunk, from which the Court is left to infer that the collision was intentionally brought about by the pilot of the World to insure her destruction. If

such be the impression the counsel for the respondents seek to produce, by bringing forward the alleged statements of the officers of the World as to the insurance, it is a sufficient answer to say, that they had not any interest in the boat or in the insurance, and that if they had sought to destroy the World in order that her owner might obtain the indemnity, we may reasonably suppose that they would have quietly run her upon a bar, a mode which would have accomplished their object with least danger to themselves and their passengers, and especially would have avoided the commission of the act under circumstances which would have drawn upon them the observation of a crowd of witnesses eager and interested to expose the crime.

The point however most insisted upon by the counsel for the respondents, is that the pilot of the World, was drunk, and that all the officers of the World were reckless and brutal men. Two witnesses testify that the pilot of the World was drunk when he came on board the Hill. Another says that the officers of the Hill "seemed as if they had been on a spree," and several testify that the officers of the World commenced drinking at the bar immediately after they came on board of the Hill. On the other hand, the officers of the World testify that their pilot was perfectly sober, and witnesses who had known him well and long, testify that he was remarkably prudent, temperate, and skilful, and that "the management of the boat was peaceful, and every thing seemed to be in good order." (Rec., 31, 77, 94, 95, 95. See Appendix to this brief, N.) But we think the charge disproved by the officers of the Hill, who were particularly interrogated on this point, and say they saw no one of the officers of the World intoxicated; amongst these is Gerard, the pilot of the Hill, who had a conversation with Fletcher immediately after the accident, and again at breakfast an hour or more later, (Rec., 108,) and would certainly have known it if Fletcher had been drunk. (See answer, Rec., p.106–7.) (Appendix to this brief, M.)

A great deal of testimony has been taken to show that the officers of the World commenced drinking and gambling as soon as they reached the Hill, but such facts are not evidence in the case, and it is therefore deemed unnecessary to do more than refer to, without quoting the testimony which contradicts it.

We think it unnecessary to follow the respondents into the evidence respecting the value of the vessel, cargo and freight. All these were reported by the commissioner, and upon exceptions to his report, were established to the satisfaction of the court. Indeed, a larger amount was proven than alleged in the libel, and the allowance was therefore

reduced to the limit claimed. (Rec., p. 158.) Nor do we think it necessary to argue to show that the fact attempted to be proved for the respondents and dwelt upon at some length in the brief, (pp. 40–41,) that the officers of the World, after their escape to the Hill, had money to play poker, is not of itself evidence that they had robbed the safe of the World, and that therefore no deduction should be made from the award of the commissoners on that account. These, and other similar points raised in the brief for the respondents, we leave to the Court without argument.

We have refrained from interrupting the course of our argument by long quotations from the evidence, but have placed in an Appendix a summary of the testimony on the principal points above discussed.

J. M. CARLISLE,
JNO. D. McPHERSON,
For Appellee.

APPENDIX.

[A.]

When the boats first came in sight of each other, the World was off Johnson's, above Arkansas Point, and the Hill below the foot of Princeton bar, distant from each other about two or two and a half miles.

L. A. Dronillard says, (Rec., p, 152:)

I know the locality about the Princeton and Arkansas bars. From Johnson's to the foot of Princeton bar is about two miles, the course of a boat. * * * It is about a mile and a half from Johnson's to the willow on the bar. From Johnson's to the point Y (where Flemming saw the Hill, see his deposition) is about two and a half miles by the channel.

Fletcher, pilot of the World, at the wheel, says, (Rec., p, 12:)

The Western World was just above the place marked G. W. Johnson on the map, when the witness first saw the H. R. W. Hill; the Western World was then near the Arkansas shore; the Illinois, another steamer bound up, was nearly opposite Mr. Johnson's; witness saw the Hill just before he passed the Illinois; the witness gave a signal of two bells to the Illinois, which she answered, keeping the Arkansas shore, and the Western World passed outside of her; after passing the Illinois he observed the Hill, and she was standing up the river just at the foot of the Princeton bar, on the Mississippi side of the river.

Bloys, co-pilot of the World, and on deck, says, (Rec., pp. 18–20:)

The Western World was running down on the Arkansas side of the river, just above Johnson's, when witness first saw the lights of the H. R. W. Hill; she was then just about the foot of Princeton bar, just turning up the bar; the Illinois, at the same time, was just about Johnson's, on the Arkansas side, coming up; the Illinois was about one hundred

yards from the Arkansas shore, as near as he can judge. In passing the Illinois the Western World gave the first signal; it was two bells; it was answered in the same way; and the Western World kept down, leaving the Illinois to her right, passed the Illinois, as he thinks, a little above Johnson's house; the Western World then stood towards the Princeton bar, following the channel, which leaves Johnson's and slopes over to the Princeton bar, striking that bar just below the head of the willows; the channel there is wide and deep, and boats are not very particular about the precise point of the bar towards which they head in crossing whilst continuing their course down the channel; and the Hill was coming up along the Princeton bar. * * * * * We were a little above Johnson's when I first saw the lights of the Hill; it was just before we gave the signal to the Illinois. We were far enough out in the river to see the foot of Princeton bar. She was about the foot of the bar. The lights showed as if she was about to turn up the bar.

Flemming, pilot of the Illinois, says, (Rec., p. 24:)

I met a boat that I took to be the Western World, at the point marked X on the chart, opposite G. W. Johnson's. I had got about to the point marked Z, when having heard from my partner, when I came on watch, that the Hill was behind us, I looked around and saw lights that I supposed the Hill's, at about the point Y. From Johnson's to the point Y is about two and a half miles.

Ichabod T. Hill, watchman of the Hill, answers, (Rec., p. 100:)

That he saw her (the World) about fifteen minutes before the collision; when he first saw her, she was above the Arkansas Point, at the head of 89, and showed to the larboard side of the Hill; after passing the point, she showed to the starboard side of the Hill. * * He supposes it was two miles distant. (Rec., p. 114.)

Evans, flatboat man, says, (Rec., p. 82:)

I was floating down about opposite to Princeton (the town) when I saw the Hill coming up the Mississippi shore some distance below, and immediately after I saw the World coming down the river in the channel, or as near the channel as I knew where it was.

[B.]

Between the points where the boats first came in sight of each other the proper channel of the World was on the Mississippi side, and that of the Hill on the Arkansas side.

Winslow Fletcher, pilot of the World, says, (Rec., p. 15:)

Boats running up stream generally run around the Arkansas bar at that stage of water about a quarter of a mile from the bar.

W. H. Gerard, pilot of the Hill, answers, (Rep., p. 103:)

That the H. R. W. Hill was bound for Nashville. That the proper channel of the Hill was around the Arkansas bar, as specified by line drawn on the map. That the channel was nearest the Arkansas shore. That where the collision took place the proper channel of the Western World was in the middle of the river between Princeton bar and Island 89. He has known no exception to this course unless a boat had business at Princeton, (Rec., p. 113.)

Rezin Bell, pilot of the Hill, answers, (Rec., pp. 103, 113:)

The proper channel of the Hill was close around the island bar of No. 89, as specified on the map. The proper channel of the Western World was closest to the Princeton bar, as shown on the map, and considerably to the right of the Hill's course ascending the river.

Ichabod T. Hill, watchman on the Hill, answers, (Rec., pp. 103, 113:)

Her (the Hill's) proper channel was close around the bar of 89, and closer to the Arkansas than to the Mississippi shore. Her (the World's) channel was nearly the middle of the river.

Robert Graham answers, (Rec., p. 103:)

The Hill's proper channel was close to the island bar; the World's channel was nearly in the middle of the river, about equal distance from each side.

Phillips, regular licensed pilot, of long experience, for libellant, says: An ascending boat, however, may take the Princeton bar, losing thereby some distance; but having

once taken that bar, she should keep around it to its head, abreast or above Flournoy's. (Rep., p. 93.)

Bloys, pilot, says: This (the Mississippi side) was not the usual side of the river for ascending boats, which generally take the Arkansas side. (Rep., p. 18.)

The Hill ran up on the Mississippi side, and attempted to cross the river opposite Princeton bar.

Gerard, pilot of the Hill, says, (Rec., p. 97:)

That he came on watch at 4 o'clock in the morning, at foot of Princeton bar, (and kept in sight of the bar†) until he came to a low place in the bar, when he saw a flatboat, and sheered over towards the Arkansas bar.

Bloys says: He saw the light from the fire doors of the Hill shining on Princeton bar, (Rec., p. 18.)

[C.]

There was an insufficient watch kept on the Hill.

J. T. Hill, watchman, on duty: Saw the World on the larboard, two miles distant, fifteen minutes before the collision. (Rec., pp. 114, 100.)

Gerard, pilot, at the wheel: First saw the World on the starboard, five minutes before the collison; the night was so dark that he could not tell the distance. (Rec., pp. 114, 100.)

Farnsworth, stearsman, on deck: First saw the World on the starboard, five minutes before the collision; the night was so dark that he could not tell the distance. (Rec., 114, 100.)

Flemming, pilot of the Illinois: After meeting the World, looked back, and saw both the World and the Hill at the same time, distant from each other two miles or more. (Rec., p. 24.)

Evans, the flatboat pilot: Saw the two boats at nearly the same distance. (Rec., p. 82.)

† Omitted in print, but so supplied in brief for respondents.

[D.]

The collision occurred on the Mississippi side of the river, within two hundred yards of the Princeton bar, while the Hill was attempting to cross the channel in which the World was passing down.

Fletcher, pilot of the World, at the wheel, says, (Rec., p. 13:)

The collision occurred, as near as he can judge, at about one hundred and fifty yards distant from the cut bar, and about one-third of the way down from the head of the willows. * * * * I think the Hill was in the channel of the river when the collision took place. I think she was about one hundred and fifty yards from the Princeton bar; the collision took place about one-third the way down the willows; it might have been more.

Bloys, co-pilot of the World, says, (Rec., p. 18:)

As near as he could tell, he should say, that the collision occurred at the distance of about one hundred and fifty yards from the bar, and about one-third the way down the willows.

Henry Evans, flatboat man, answers, (Rec., pp. 79, 80:)

The collision took place near Princeton, at what is called Princeton bar. At the time of the collision I was about one-half of the distance down the Princeton bar, about two hundred and fifty yards from the Princeton bar. I was a pilot on a flatboat at the time, and in charge of the boats. At the time of the collision the two steamboats were two hundred and fifty yards from the bar, and just below the heads of the willows on the bar, and near about half-way down the bar.

P. Ray, flatboat man, says, (Rec., p. 147:)

Deponent was on a pair of flatboats, which were in charge of Henry Evans, as pilot; deponent was one of the hands; the collision occurred somewhere between four and five in the morning; witness was below when Evans cried out "oars," which was the signal for us to come out; witness came out immediately; it was then raining; Evans called out to bring out a lantern. When deponent came out he saw two boats, one ascending, the other descending; the

ascending boat was then below the flatboats, and the descending boat was above; the descending boat seemed closest to us; both the boats were between the flatboat and the left or Mississippi shore; after the collision they looked as if they were going to make a landing on that shore; they were quite close to it; deponent heard a great ringing of bells and much noise; heard the concussion of the two boats as they came together; the boats were about two hundred or two hundred and fifty yards from the flat when they came together, in between the flat and the Mississippi shore, nearly opposite or a little below the flat. Probably the flats were not so far from the boats as the deponent has stated above, because casks of bulk pork from the wreck filled with water, and sank quite near or by the side of the flat.

[E.]

The Hill, having brought about the danger by taking a wrong course, was warned in time, but frustrated all endeavors to avoid it, by persisting in it in disregard of signals which she was bound to obey.

Fletcher, pilot of the World, says:

Witness gave the first signal by tapping his bell once; the Hill crossed his signal by tapping twice; he repeated his signal, and it was again crossed by the Hill. [Rec., p. 13.]

Gerard, pilot of the Hill, says: He continued his course until the World rang one bell; he then rang two bells; the World again rang one bell. (Rec., p. 13.)

Irwin, the mate of the Hill, says: He was in his berth; he heard the pilot tap the bell twice, he thought for the larboard lead at the time, until he heard the bell again tapped. (Rec., p. 140.)

Flemming, pilot of the Illinois, says:

It is not a usual thing for one boat, when meeting another, to, and receiving a signal, to cross the signal; it is usual for the boat that gives the first signal to go whichever way she first signals for; this has been the rule ever since we commenced ringing bells, and before the law required this course. (Rec., p. 25.)

Fletcher, pilot of the World, says: He intended to give the ascending boat the choice of sides. (Rec., p. 13.)

Gerard, pilot of the Hill, says:

That it was not more than five minutes from the time he first saw the World, that the collision took place; and not more than two and a half minutes from the time the World rang her first bell. (Rec., p. 100.)

Bloys says: The World gave her first signal when distant about five hundred yards, and that it was crossed, and repeated and crossed again. (Rec., p. 18.)

[F.]

The World reversed her engine promptly as soon as her signal was crossed by the Hill, i. e., on the first indication of danger.

Fletcher, pilot of the World, says:

Witness gave the first signal; it was crossed by the Hill: "he instantly stopped his engines and reversed them. (R., p. 13.)

Bloys, co-pilot of the World, says:

He was in the pilot-house; and when the Hill crossed the World's first signal, Fletcher "instantly stopped the engines, tapped once, and reversed his engine, commencing to back the boat." There was no headway on her when the boat struck. (Rec., p. 18.)

Morgan, first engineer of the World, says:

He was on watch; "bells of both engines rang to stop before the collision, and then immediately both rang to back; we made from six to ten revolutions before the collision. * * I should suppose five or six revolutions of her engines ought to have stopped the headway of the World. * * The Western World had a great deal of power."

Mackall, assistant engineer of the World, says:

"About five minutes or more before the collision, the engine bells rang to stop; the order was immediately and promptly obeyed. * * The engines were set to backing some time before the collision; it was probably three min-

utes from the times the engines were stopped until they were set to backing. I don't know how many revolutions were made backing, but think there were as many as would effectually stop the headway." (Rec., p. 69.)

Fulton, captain of the World, says:

He was in his room; heard the signal of the World, and her engines were immediately stopped; does not recollect the signal of the Hill; went out on the boiler-deck, "the World's engines were still going back."

Evans, flat-boatman, says:

He was one hundred yards from the boats when they came together; heard the bells of the "World" stop and back; think she made five to ten back revolutions, and had no headway through the water. (Rec., p. 81.)

[G.]

The Hill increased the risk and extent of the disaster, by not stopping and reversing her engines promptly, as is usual and proper in cases of impending collision. She did not stop till after the second signal from the World, and then reversed but one engine.

The answer says:

"Upon hearing the said signal and seeing that the said Western World * * * was pursuing an improper and highly dangerous course * * the engines of the Hill were immediately stopped." * * * The signal of one bell or one tap was then repeated by the World, * * and the Hill was then backed. (R. p. 8.)

Gerard, pilot of the Hill, says:

"He continued his course until the Western World rang one bell. He immediately stopped the H. R. W. Hill, as soon as he could catch hold of the bell ropes. * * The Western World again rang another bell. He immediately started the Hill to backing on her larboard engine." [Evidently a misprint for starboard.] (Rec., p. 96.)

Bell, pilot of the Hill, says:

The Hill stopped [her engines] before answering the signal of the World, and backed at the second signal. (Rec., pp. 98, 116.)

Graham, engineer of the Hill, says:

The Hill was stopped immediately after the first signal. He cannot say whether the Hill stopped before answering the Western World's signal. (Rec., p. 116.)

Whistler, second engineer of the Hill, says:

He was on duty; had gone to the forward end of the boilers; heard one big bell ring; went back; heard the bells ring for engines to stop; bells then rang to check the wheels up; wheels were checked up, and waited for another bell; looked around and saw another steamboat coming directly towards the "Hill"; supposed she would hit about the middle of the boilers; his engine bell then rang to back the starboard engine; the pilot halloed down to back her strong; looked out to see what the other boat was doing; found the "Hill" had gone back; about that time the larboard engine was started back; the boats then came together. * * * Does not think the "World" was farther off than the width of herself when the "Hill" commenced backing, but could not judge well of the distance. (Rec., pp. 136, 137.)

Connelly, assistant engineer of the "Hill," says:

He was on watch at the time at the larboard engine; the starboard engine had been backing some time before the collision; it backed first; both bells rang to back before the collision. (Rec., p. 283.)

Fletcher, pilot of the "World," says:

He thinks the larboard engine of the "Hill" was stopped first, and her starboard engine was going ahead when the boats struck; judges so from the way the Hill moved. Gerard told him the same day that he was backing the starboard engine to get the head of the "Hill" around to the "World." (Rec., p. 13.)

Bougher, mate of the World, says:

"I think the starboard engine of the Hill was not stopped until after the boats came together. I am certain one of her engines never stopped."

Farnsworth, steersman of the Hill, says: The moment the World rang one bell, Gerard stopped his engines, rang two bells, immediately after rang to ship up for backing; the

World again rang one bell [and Gerard rang] to back the starboard engine, which was immediately done, and told Farnsworth to help him to give her the wheel hard over, (to the starboard. Gerard, p. 97.) Gerard started the larboard engine to backing, and then said to the engineer to back her hard. (Rec., pp. 99—100.

[H.]

The injury received by the World was on the larboard side, and such as could have been inflicted only by a boat having considerable headway.

Bougher, mate of the World, says: As soon as the boats came together he went down and found the World in a sinking condition; thought she would sink in five minutes, there was a hole in her as large as a barn door; she was struck on the larboard side. (Rec., p. 38.) The Hill remained with the wreck four or five minutes, or a little longer. (Rec., p. 45.)

Mathis, wrecker, says: He proceeded on a steamer to the wreck and took charge of it; she was broken in on the larboard side of the bough, about fifteen or sixteen feet from the stern; the blow must have been a severe one, for the hull was cut down to within three streaks of the keel; the third streak was cut into a little; also, the timbers appeared to have been driven in and broken off; the hole was largest at the top, and smallest at the bottom, at the bottom the hole seemed to be merely cut in; at the top the timbers were knocked in for the space of ten or nineteen feet. (Rec., p. 90.)

Latham, wrecker, says: The bows were entirely demolished. (Rec., p. 144.)

Fletcher says: The boats floated together about fifteen minutes. (Rec., p. 16.)

Bloys says: In not more than five minutes after the collision the World turned over on her side, and in ten minutes more was bottom up. He saw that the whole bow was knocked off. (Rec., p. 19.)

Irwin, mate of the Hill, (R., p. 141,) says: That when the

World careened and righted up her starboard guard caught on the knee of the Hill, and the boats was thus held together until fearing injury to the Hill, he ordered the guard to be cut away, and as soon as that was done the World turned over.

Henry, carpenter of the World, (Rec., p. 74,) says: He heard the shock, and felt it, ran down stairs and out on the forecastle; saw at once that the World was sinking, and hallowed back to the mate that she would go down inside of two minutes. * * * The Hill being alongside of us she floated with the wreck some four or five minutes. * *

Clute, passenger on the World, (Rec., p. 76,) says: I went out on the boiler deck, and from there I went on to the hurricane roof. There was a good many passengers on the deck at the time. I saw the crew of the boat forward trying to stop a hole into which the water was rushing. The hole seemed to be large enough to drive a coach and four through, from the way the water seemed to be running in. The hole was on the larboard side of the boat.

[I.]

After the collision the boats floated down together to the foot of Princeton bar.

Gerard, pilot of the Hill, says: It was so dark he could not see the bar, nor the timber on the bend, until the Hill drifted close into shore below Princeton bar. (Rec., p. 98.)

Evans, flatboat man, says: When the collision took place the steam-boats drifted down the river. (Rec., p. 80.) * * The two steam-boats floated down the river, and my flatboats and the two steamers passed each other about opposite to the foot of Princeton bar. (Rec., p. 82.) * * * * * From the time of the collision until the steamers passed the flatboats, the steamers had worked out a little from the Princeton bar. (Rec., p. 83.)

W. Ray, flatboat man, says: The boats floated together after they struck for some four or five minutes close into the shore or Mississippi bar, they then parted. (Rec., 255.) I saw immediately after the collision the steamers swing around and floated apparently together, and so continued

for four or five minutes, then the Western World turned keel up. (Rec., p. 256.)

P. Ray, flatboat man, says: After the collision the boats looked as if they were going to make a landing on the Mississippi shore. (Rec., p. 247.) * * * The Hill appeared to be stationary from the time of the collision as long as she was in sight of us. (Rec., p. 248.) * * * When I first saw the wreck I saw the light of the Hill, it continued in the same place, and did not move as long as we were in sight. (Rec., p. 249.)

[K.]

Some of the cargo of the Western World floated ashore on the Mississippi side; the cattle also swam ashore on that side; neither cargo nor cattle landed on the Arkansas side.

Mackall says: After daylight on the morning of the collision he saw some of the cattle from the Western World on shore on the Mississippi side a short distance below the foot of Princeton bar; he also saw some freight that had floated into shore near the foot of Princeton bar; also some pieces of the cabin. (Rec., p. 70.)

Mathis, wrecker, says: He was sent by the Insurance Company to take charge of the wreck and property; found some freight at Carolina Landing, on the Mississippi side; found no freight on the Arkansas side until he got to Ashport, six miles below Carolina Landing.

The freight found at Carolina Landing, must he thought have been put afloat on the Mississippi side of the current. Had the freight been put afloat opposite Johnson's, or below it, he does not think it would have landed of itself at Carolina Landing; does not think it was possible; it could not have crossed the current above Carolina Landing. (Rec. p. 89.)

Peterson, (Rec., p. 200,) twenty-five years a pilot and master, says, the floating of the freight indicates that the collision occurred in the channel, close to Princeton bar. Between Johnson's and Carolina Landing, he knows no point where goods being put afloat would of their own accord land at Carolina Landing, unless it be close to the head of Princeton bar. [Of course an article put afloat at

any point lower down in the track here indicated, would make the same landing.]

Mathis (Rec., p. 90,) says:

He floated with the current six or seven times from Johnson's to Carolina Landing. He was trying to find the World's boilers.

[L.]

The place of collision assigned by the respondents is a short distance, from a quarter to half mile only below Johnston's, and on the Arkansas side; and to have met the Hill there the World must not only have run square across the river as the respondents endeavor to prove, but actually have gone up stream, both of which suppositions are in the highest degree improbable.

Flemming, pilot of the Illinois, after stating he saw both boats a few minutes before the collision says: "When I heard of the collision after it occurred, I supposed from the position in which I had seen the two boats, that they must have come together about the foot of the willows on the Princeton bar. The boat that I took to be the Western World, I would suppose, if she had only floated down and let her wheels turn, would have been past the head of Princeton bar. From map No. 2, if it represents the collision, I should say from the position of the boats when I saw them, that the Western World must have rounded to and gone up the stream to be where she is thus represented. (Rec., p. 24–5.) "I had a conversation with Captain Newell about the collision * * * Captain Newell told me in that conversation, that the collision had happened about as represented on map No. 2, near the head of Arkansas bar. I answered, that the World must have rounded to, to get there and come up the stream. He replied, I think in these words, 'By God she did!'" (Rep. p. 26.)

[Map No. 2, marked p. 62, is identical with map previously put in by respondents at p. 98, marked "p. 285."

Phillips, an experienced pilot, says:

"If a descending boat were about Johnson's Point, and an ascending boat about the same place, marked 7 [Y] on the map, they could not in the usual course of things come

together at or about Arkansas bar, and on that side of the river so as to be in danger of collision; the ascending boat would have *five times* as far to run as the descending boat. (Rec. p. 93.)

[M.]

Whether the officers of the World were intoxicated.

Answers of the officers of the Hill to the respondent's 11th Interrogatory. (Rec., p. 106.) Did or not the officers of the Western World come on board after the collision? If so, how long after? Was any officer of the World intoxicated? If so, state what officer?

Bell, pilot, answers. * * * He does not know whether any officer was intoxicated or not.

Hill, watchman, answers. * * * He does not know of any of the officers being intoxicated; he knows of some who came on board drunk; but cannot say as to their being officers.

Smith, clerk, answers. * * * He does not know that any of the officers were intoxicated; but at the time they came on board, he observed them immediately drinking at the bar.

Graham, engineer, answers. * * * Fletcher seemed to be under the influence liquor when he came on board the Hill.

Farnsworth, steersman, answers. * * * He does not know that any of the officers were intoxicated at that time.

Gerard, pilot, answers. * * * He does not know. (Rec., p. 106,) [that any officer was intoxicated.] * * * He did have some conversation with Sam. Fletcher; he called Fletcher into the pilot house, and said to him. * * (Rec. p. 108.) "If any of the officers of the World were intoxicated, he does not know it." (Rec. p. 119.)

[We omit the testimony of the officers of the World, as to the capacity and sobriety of their pilot.]

[N.]

As to Fletcher's character.

Phillips (R. p. 92) is a regular licensed pilot of nineteen years' experience; has known Fletcher eighteen years; has employed him as pilot; considers him as a pilot to rank among the very best; he has been engaged on the best boats; ranks as exceedingly careful and prudent; witness considers him as the best pilot on the river; is a sober man in comfortable circumstances; witness never saw him intoxicated; don't know that he ever drinks too much; has seen him tempted.

Hiner (R. p. 94) has been a pilot for seventeen years; has known Fletcher nearly twenty-five years as a pilot; considers him as prudent and skilful as any pilot on the western waters; has had the best opportunity of judging of his capacity; never saw Fletcher intoxicated; if Fletcher had been intemperate witness must have known it. Fletcher is extremely careful—prudent to excess; his reputation among steamboat owners, captains, and pilots, was of the highest; he is considered A No. 1 among them; he owns considerabe property.

Stewart (R. p. 95) says he has been a pilot twenty years; has known Fletcher nineteen years; he is among the best pilots; witness knows none better; he is so considered by every one; has heard him spoken of by owners, captains, and pilots; his reputation is that of a prudent, skilful pilot; never saw or heard of his being intoxicated; is in independent circumstances.

Nelson (R. p. 95) has been a pilot ten years; has known Fletcher fifteen years; he is regarded as one of the best pilots on the Ohio and Mississippi; his reputation is that of a careful, capable pilot; is a very steady man; has plenty to live on, without steamboating.

EVIDENCE AS TO EVANS'S CHARACTER.

Against him.

1. *Haynes*, A. Horney, aged forty-four, knew Evans eight years; knew his reputation; don't know his character for truth and veracity. (R. p. 262.)

2. *Turner*, farmer and boatman, aged thirty years, has known Evans seven years. Unfavorable. (R. p. 264.)

3. *Phalin*, grocer, aged forty-four, knew Evans five years; has never heard his character for truth and veracity spoken of. (R. p. 265.)

4. *Stratton*, merchant, aged thirty-one years, has known Evans seven years; can't say he ever heard anything said having special reference to Evans's character for truth and veracity. (R. p. 266.)

5. *Weaver*, merchant, aged sixty-three years, has known Evans fifteen or twenty years; never heard anything against Evans till he had grown up to manhood, and never afterwards knew of his own knowledge anything to his prejudice; but understood he afterwards became a man of reckless and bad character. (R. p. 26.)

6. *Cochran*, hotel keeper, aged forty-six years, knew Evans about eight or ten years; often heard Evans spoken of; never heard his character for truth and veracity spoken of favorably or unfavorably. (R. p. 268.)

7. *Greer*, whiskey rectifier, aged thirty-five years, knew Evans seven years; knew his reputation; never heard his character for truth and veracity spoken of. (R. p. 269.)

In his favor.

1 *Grider* has known Evans ten or twelve years; is well acquainted at Aurora, where Evans came from; knows almost every one there. Has always heard Evans well spoken of; never heard anything discreditable to him; his character for truth is good; would believe him as soon as any one. (R. p. 194.)

2. *Coxe* has known Evans fifteen years; lived all that time within three miles of his home; character good for truth; would believe him as soon as any man. (R. p. 195.)

3. *Buffington* has known Evans from childhood; character good; would have no hesitation in believing him. (R. p. 195.)

4. *Sutton* has known Evans since he was a boy; has had ample opportunity of learning his character; would believe him undoubtedly. (R. p. 196.)

5. *Nelson* has known Evans ten years; would have no hesitation in believing him. (Rec., p. 197.)

6. *Cheek* was born and raised in Evans's neighborhood; his character good; never heard anything against him; he was honest and faithful; would believe him without hesitation. (Rec., p. 198.)

Barnaby has known Evans twelve years; character always good. (Rec., p. 205.)

7. *Nevitt*, aged fifty-eight years, has known Evans twenty years; he was born and raised in witness's neighborhood; had good opportunity of knowing his character for truth and honesty; it was and is good; would not hesitate to believe him; was well acquainted with his character for truth and veracity. (Rec., p. 211.)

8. *Lanks*, aged seventy-nine years, has known Evans since he was a small boy, and more intimately within ten years; he sustained a good character as an honest, trustworthy man. "Indeed, I would believe him under oath. I would not hesitate a moment to believe him," &c. (Rec., p. 214.)

9. *Walser*, aged fifty years, has known Evans fifteen years; character for truth good; an honest, trustworthy man; would certainly believe him.

The following witnesses testify to the same effect, and quite as strongly:

10. *Cheek*, pilot, aged forty-eight years, knew him fifteen years. (Rec., p. 219.)

11. *Worley*, farmer, aged forty-six years; knew him from his childhood to his death. (Rec., p. 221.)

12. *Small*, farmer, aged sixty-two years, knew him from the time he was born to his death. (Rec., p. 224.)

13. *Small*, farmer, aged thirty-seven years, was raised with Evans. (Rec., p. 225.)

14. *Small*, farmer, aged twenty-eight years, was raised with Evans. (Rec., p. 227.)

15. *Buffington*, boat finisher, &c., aged forty years, has known Evans from infancy. (Rec., p. 228.)

16. *Williams*, river trader, aged thirty-nine years, has known Evans ten years. (Rec., p. 230.)

17. *Smith*, boat builder, aged forty-six years, has known Evans sixteen years. (Rec., p. 230.)

18. *Webber*, flat boatman, aged twenty-six years, knew Evans five years. (Rec., p. 233.)

19. *Lewis*, flat-boat pilot, aged thirty years, knew Evans nine years. (Rec., p. 234.)

20. *Smith*, steamboat engineer, aged forty-seven years, knew Evans seven years. (Rec., p. 236.)

21. *Cure*, painter, aged thirty-three years, knew Evans ten years. (Rec., p. 237.)

22. *Gray*, pilot, aged forty-two years, knew Evans all his life. (Rec., p. 238.)

23. *Thompson*, flat boatman, aged twenty-two years, knew Evans nine years. (Rec., p. 240.)

24. *Sketter*, flat-boat pilot, aged twenty-six years, knew Evans eight years. (Rec., p. 241.)

25. *Farrall*, farmer, aged forty-three years, knew Evans nine years. (Rec., p. 241.)

26. *Durbin*, carpenter, aged thirty-nine years, knew Evans twenty years. (Rec., p. 244.)

Mar 26. Record, Field.

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Map

SUPREME COURT OF THE UNITED STATES.

No. ~~229.~~ ~~146. 67. 44. 46.~~ 40.

PRISCILLA ANN DUFFEILD (now PRISCILLA ANN YOUNGUE, and her husband JAMES YOUNGUE),
Plaintiffs in Error,

vs.

FRANCIS GUILBEAU, JOHN JAMES, GUSTAVUS WUEST, CONCEPTION R. CALLAHAN, widow of BRYAN CALLAHAN, deceased, F. F. MICHAUD, ELEANOR ELLIOTT, WILLIAM ELLIOTT, JOHN ELLIOTT, and the Trustees of the Presbyterian Church, to wit: ASA MITCHELL, FRANKLIN L. PASCHAL, JOHN S. McCLELLAND, and SAMUEL G. NEWTON, Def'ts in Error.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

GIDEON, Printer.

SUPREME COURT OF THE UNITED STATES.

No. 229.

PRISCILLA ANN DUFFEILD (now PRISCILLA ANN YOUNGUE, and her husband JAMES YOUNGUE),
Plaintiffs in Error,

vs.

FRANCIS GUILBEAU, JOHN JAMES, GUSTAVUS WUEST, CONCEPTION R. CALLAHAN, widow of BRYAN CALLAHAN, deceased, F. F. MICHAUD, ELEANOR ELLIOTT, WILLIAM ELLIOTT, JOHN ELLIOTT, and the Trustees of the Presbyterian Church, to wit: ASA MITCHELL, FRANKLIN L. PASCHAL, JOHN S. McCLELLAND, and SAMUEL G. NEWTON, Def'ts in Error.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

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UNITED STATES OF AMERICA,

District Court of the United States for the Western District of Texas, at Austin, holding sessions.

At a term of the District Court of the United States for the Western district of Texas, begun and held at the city of Austin, for the June term, in the year of our Lord one thousand eight hundred and sixty: Present at the said session the Hon. Thomas H. Duval, Judge of said court, William C. Young (by his deputy Thos. A. Masterson), United States Marshal, and Matthew Hopkins, Clerk. Among other proceedings upon the law side of said court were the following, to wit:—

(Title of cause.)

PRISCILLA ANN DUFFEILD, now PRISCILLA ANN YOUNGUE, joined with her husband JAMES YOUNGUE, plaintiff,

vs.

FRANCIS GILBEAU, JOHN JAMES, GUSTAVUS WUEST, CONCEPTION R. CALLAHAN, widow of BRYAN CALLAHAN, dec'd, F. F. MICHAUD, ELEANOR ELLIOTT, WILLIAM ELLIOTT, JOHN ELLIOTT, and the Trustees of the Presbyterian Church, to wit: ASA MITCHELL, FRANKLIN L. PASCHAL, JOHN S. MCCLELLAND, and SAMUEL G. NEWTON, defendants. } No. 184.

Be it remembered, that heretofore, to wit, on the fourth day of November, in the year of our Lord one thousand eight hundred and fifty-six, came John Hancock and Charles West, the attorneys of said plaintiff, and filed in the office of the Clerk of the District Court of the United States for the District of Texas, at Austin, their petition herein, which bears the following endorsements, to wit:—

P. A. DUFFEILD
vs.
F. GILBEAU, JOHN JAMES, et al. } L. 184.

This suit is brought as well to try title as for damages.

H. & W.

And is endorsed in the handwriting of W. P. de Normandie, then clerk, to wit:—

Filed Nov. 4th, 1856.

W. P. DE NORMANDIE, Clerk.

And which petition is in the following words, to wit:—

(Petition.)

UNITED STATES OF AMERICA,
District of Texas, Austin.

To the Honorable John C. Watrous, Judge of the United States District Court for the District of Texas, with Circuit Court powers.

The petition of Priscilla Ann Duffeild, a citizen of the State of Mississippi, and resident of the County of Parker, in said State, plaintiff, complaining of Francis Guilbeau, John James, Gustavus Wuest, Conception R. Callaghan, widow of Bryan Callaghan, dec'd, F. F. Michaud, Eleanor Elliott, William Elliott, John Elliott, and the Trustees of the Presbyterian Church, to wit, Asa Mitchell, Franklin L. Paschal, John S. McClelland, and Samuel G. Newton, all citizens of the State of Texas, and residents of the county of Bexar, in said State of Texas: Respectfully represents that the said plaintiff is the owner and seised in fee of a certain tract or parcel of land in the State of Texas, county of Bexar, and in the city of San Antonio, described as follows, to wit: A lot or parcel of land, situated in the city of San Antonio, containing about four acres, more or less, bounded southerly by the street leading from the city to the Alamo, called Commerce Street, and easterly and northerly by the River San Antonio, and westerly by land owned by the widow Juagiuineta Glauton, and now occupied by J. B. La Coste, Antonio Mauchaca, and the said widow.

Plaintiff further represents and alleges that the said defendants did, on the first day of January, in the year of our Lord eighteen hundred and fifty-six, in the said county of Bexar, with force and arms break and enter the said lot or parcel of land, the close of the said plaintiff, and ejected the plaintiff therefrom, trod down the grass and destroyed the herbage, and other wrongs did upon said premises to the damage of this plaintiff in the sum of fifty thousand dollars, for which plaintiff brings suit.

The said plaintiff, therefore, prays that said defendants may be cited to appear and answer to this petition; and that said defendant may be decreed to pay to this plaintiff the said damages and the costs of this suit; and that a writ of possession may be issued to put this plaintiff in possession of the said lot or parcel of land; and plaintiff prays for all such other and further relief as to equity and good conscience may appertain. HANCOCK and WEST,
Pl'ff's Attorneys.

(Of Citations of Service.)

Citations to the defendants named in the aforesaid petition issued in due course and form of law, and due service having been made upon all the defendants, at the November term, A. D. 1856, to wit, on the 26th day of November, A. D. 1856, the defendants appeared,

by their attorneys, and filed the following answer; which answer is endorsed No. 184, Duffeild *vs.* Guilbeau *et al.* Ans. (endorsed) filed Nov. 26, 1856. "Paschal's."

W. P. de NORMANDIE, Clerk.

And which answer is in words to wit:—

(Answer.)

PRISCILLA ANN DUFFEILD
vs.
F. GUILBEAU and Others. } No. 184.

And now, at this term, come the defendants, served with process, and defend the force and injury, when, &c., and say, that they are not guilty of the force and injury, when, &c., and put themselves upon the country, &c.

2. And for further plea in this behalf, the defendants say that they, and those under whom they claim, have been in the peaceable and quiet adverse possession of said land described in the plaintiff's petition for more than three years next before the commencement of this suit, under title and color of title; and this they are ready to verify, &c., and they pray judgment.

J. A. & GEO. W. PASCHAL.

3. And for further plea in this behalf, they say *actio non*, because they say, that they and those under whom they claim have been in the peaceable and quiet adverse possession of said property for more than five years next before the commencement of this suit—cultivating, using, and enjoying the same, and paying taxes thereon, and claiming under deeds duly registered in said county of Bexar; and this they are ready to verify, and pray judgment, &c.

4. And for further plea in this behalf, they say that they and those under whom they claim have had ten years' like adverse peaceable adverse possession of said described premises—using and cultivating the same; and that such possession gives this defendant full property, precursive of all claims, to all of said property; and this they are ready to verify, &c.

5. And for further plea, these defendants say, that if ever the plaintiff had right of entry, the same accrued to her more than ten years before the commencement of this suit; and that more than ten years next after the right accrued elapsed, before the plaintiff made entry in said premises, and therefore the right is proven barred; and this they are ready, &c.

J. A. & GEO. W. PASCHAL.

And the defendants say, that they have each been in possession of parts of said premises for more than one year next before the commencement of this suit; and that they and those whose estate they claim have made valuable improvements upon said property, to wit, improvements to the value of one hundred and fifty thousand

dollars—an account and specification of which will be in due time filed as part of this suggestion.

J. A. & GEO. W. PASCHAL,
for Defendants.

(Of Continuances.)

The cause was continued at the Nov. term, A. D. 1856; June term, A. D. 1857; January term, 1858; June term, 1858; by the orders of court, from term to term of entry, until the January term, A. D. 1859, of the United States District Court for the Western District of Texas, sitting at Austin, the Hon. Thomas H. Duval presiding Judge, since and inclusive of the June term, A. D. 1857.

And afterwards, to wit, on the eighth day of January, A. D. eighteen hundred and fifty-nine, came Priscilla Ann Duffeild, said plaintiff, by her attorneys, Hancock and West, Dennison and Henson, Clark and Walker, and George F. Moore, and filed their amended petition, which is in words to wit:—

(Amended Petition.)

United States District Court, Western District of Texas, at Austin, Jan'y term, A. D. 1859.

P. A. DUFFEILD
vs.
GUILBEAU *et als.*

And now comes the plaintiff in the above entitled cause, and leave of the court being first had for amendment to her petition and replication to the several answers of said defendants, setting up the bar of the statute of limitations as barring and precluding her from having and maintaining her said suit, she says that on, to wit, the day of October, A. D. 1839, she became a *feme covert* by intermarriage with William C. Duffeild, and so continued until the death of said William C., on, to wit, the 9th day of November, A. D. 1854, wherefore she says by reason of her disability to sue from her said coverture during said period of time, as aforesaid, she should not be barred or precluded from having or maintaining her said suit, and this she is ready to verify.

HANCOCK & WEST,
DENNISON & HENSON,
CLARK & WALKER, and
GEO. F. MOORE, Atty's for Plaintiff.

(Of Continuances.)

The cause being continued at the January term, A. D. 1859, and the June term, A. D. 1859, and at the January term, A. D. 1860.

(Amended Petition.)

At the June term, A. D. 1860, the plaintiff by her said attorneys filed their amended petition, which is endorsed, to wit, No. 184. P.

A. Duffeild *vs.* F. Gilbeau *et als.* Amended petition, filed June 13, 1860. Matthew Hopkins, Clerk; Henson & Moore, and Hancock & West, P'ltffs. atty's. And which is in words to wit:—

In U. S. Dist. Ct., June term, A. D. 1860.

P. A. Duffeild
vs.
F. Guilbeau *et als.* } No. 184.

And now at this day comes the plt'ff in the above entitled cause, and with leave of the court first had and obtained, amends his original petition heretofore filed, and by way of amendment, avers that since the said defdts. whose names are fully set out in the said original petition, with a strong hand and unlawfully and illegally have had and held, the possession of said above described premises, down to the bringing of this suit, and from that day down to the present time, the said defts. still do illegally and forcibly hold the possession of said premises, and during that date and down to the present time, have used and enjoyed the rents and profits, and use and occupation of said premises, which are worth the sum of five hundred dollars per month from the date of said illegal entry down to the present time, all of which being the sum of twenty-five thousand dollars they have converted to their own use and deprived your petitioner of the benefit of the same; wherefore, in addition to the writ of possession heretofore prayed for, your petitioner prays for a judgment for damages, rents and profits, possession and costs, &c.

DENNISON & HENSON,
MOORE, CLARK & WALKER,
HANCOCK & WEST, for Pltffs.

(Answer to Amended Petition.)

And on the same day, to wit, on the 13th day of June, A. D. 1860, the defendants by their attorneys, J. A. & Geo. W. Paschal, filed their answer to the amended petition, which is endorsed, to wit, No. 184. Duffeild *vs.* Guilbeau *et als.* Answer to amended petition, filed June 13th, 1860.

M. HOPKINS, Clerk.

And which is in words to wit:—

Priscilla Ann Duffeild
vs.
F. Guilbeau and Others. } No. 184.

And the defendants in answer to amended petition of the plaintiff says, that they entered upon the *locus in quo* in good faith—by title more than one year before the commencement of the suit; that the land was then vacant, and in the state in which it was, it was worth no rent whatever; that they have put improvements of great value, to wit, of the value of one hundred thousand dollars, upon said land,

and the only value of rents is and have always been, the value of their own improvements; and for which the plaintiff, even if she had the right to recover, would not be entitled to anything. All of which they are ready to verify, and pray judgment, &c.

J. A. & GEO. W. PASCHAL,
for Defendants.

And on the same day, to wit, June 13th, 1860, the following entry appears upon the minutes of the court:—

(Order—leave to amend.)

Wednesday, June 13th, 1860.

P. A. DUFFEILD
vs.
FRANCIS GUILBEAU *et als.* } No. 184.

In this cause this day came the respective parties by their attorneys, and on motion of each party it was ordered they have leave to amend their pleadings herein—and the amended petition and amended answer was filed.

And afterwards, to wit, on the 14th day of June, A. D. 1860, the following entry appears upon the minutes of the court:—

(Jury empanelled—order and suggestion of marriage.)

PRISCILLA ANN DUFFEILD
vs.
FRANCIS GUILBEAU *et als.* } No. 184.

Now came the parties, plaintiff and defendants, by their respective attorneys; the plaintiff by George F. Moore, R. A. Henson, and Hancock & West; and the defendants by J. A. & Geo. W. Paschal. And the plaintiffs by their attorneys suggest the intermarriage of plaintiff with James Youngue, and on motion it was ordered that he be made a party plaintiff to the cause; and now upon the pleas and issues joined came a jury of twelve good and lawful men of the Western District of Texas, duly sworn to try the issues of this cause, to wit, Wesley Johnson, F. E. Adams, W. D. Thompson, A. H. Barnes, A. R. Crozier, A. N. Hopkins, W. F. Robinson, E. W. Kirman, Leander Brown, F. S. Mayfeild, John R. Hubbard, A. C. Hill, —when Wesley Johnson, F. E. Adams, and W. D. Thompson were challenged by the plaintiff, and stood aside—and were called in their stead and place T. S. Minor, H. B. Kinney, James Matthews; and now the defendants challenge A. H. Barnes—and was called in his place John L. Couley, and the panel was complete, to wit, A. R. Crozier, A. N. Hopkins, W. F. Robinson, E. W. Kirman, Leander Brown, T. S. Minor, H. B. Kinney, James H. Matthews, John L. Couley, A. C. Hill, John R. Hubbard, and F. S. Mayfeild; and the case proceeded until the hour of adjournment—when the jury were discharged to meet to-morrow morning at nine o'clock, under

the instruction of the court that they hold no converse in relation to this case among themselves or with others. And afterwards appears the following entry, to wit:—

(Entry.)

Friday, June 15th, 1860.

PRISCILLA ANN DUFFEILD
vs.
FRANCIS GUILBEAU et al. } No. 184.

And now pursuant to adjournment came the parties, their attorneys, and the jury empanelled in this cause, and the case proceeded until adjournment; the jury receiving the same instructions heretofore given were discharged to meet to-morrow morning at nine o'clock; and afterwards, to wit, "Saturday, June 16, 1860," the following entry appears on the minutes of the court.

(Entry.)

PRISCILLA ANN DUFFEILD
vs.
FRANCIS GUILBEAU et al. } No. 184.

In this cause, the parties by their attorneys, and the jury empanelled in the cause, came pursuant to adjournment, and by consent of all parties, H. B. Kinney, one of the jurors, was finally excused, and the case proceeded in the examination of testimony and in the hearing until the hour of adjournment, when the jury were discharged under the instructions heretofore given them, "to meet on Monday morning at nine o'clock; and afterwards, to wit, on "Monday, June 18th, 1860," the following entry appears upon the minutes of the court.

(Entry.)

PRISCILLA ANN DUFFEILD
vs.
F. GUILBEAU et al. } No. 184.

On this day came the parties by their attorneys, and thereupon, the jury having been called and answering to their names, the case proceeded in trial until the hour of adjournment, when they were discharged under the instructions formerly given, to meet to-morrow morning; and afterwards, to wit, "Tuesday morning, June 19, 1860," the following entry appears upon the minutes.

(Entry.)

PRISCILLA ANN DUFFEILD
vs.
FRANCIS GUILBEAU et al. } No. 184.

In this cause came the parties by their respective attorneys, and came also the jury empanelled in the cause, and the case proceeded

in the trial thereof until the hour of adjournment, when they were discharged to meet to-morrow morning at nine o'clock; and afterwards, to wit, on "Wednesday morning, June 20, 1860," the following entry appears on the minutes of the court.

(Entry.)

PRISCILLA ANN DUFFEILD
vs.
FRANCIS GUILBEAU et al. } No. 184.

In this cause came the parties plaintiff and defendants by their respective attorneys, and came also the jury empanelled in the cause, and thereupon the case proceeded upon trial until the hour of adjournment, when the jury were discharged under the instructions before given, to meet to-morrow morning at nine o'clock; and afterwards, to wit, on Thursday, June 21, 1860, the following entry appears upon the minutes of the court.

(Entry.)

PRISCILLA ANN DUFFEILD
vs.
FRANCIS GUILBEAU et al. } No. 184.

The parties, plaintiff and defendants, by their attorneys and the jury empanelled in the cause, came pursuant to adjournment of yesterday, and the case proceeded until a late hour upon trial, and the testimony and argument having closed, the Judge reserved his charge until to-morrow morning at nine o'clock, and the jury were discharged under their former instructions until that hour.

(Entry.)

And afterwards, to wit, on Friday, June 22d, in the year of our Lord one thousand eight hundred and sixty, the court met pursuant to adjournment, and the jury having been called and severally answered to their names, the court proceeded to deliver his charge in main, which charge of the court is in words and of the tenor following:—

Charge of the Court.

(Charge of the Court in main.)

PRISCILLA ANN DUFFEILD
vs.
FRANCIS GUILBEAU and Others. }

This is an action of trespass to try title, and it is a well settled principle in suits of this character, that the plaintiff must show a legal title in himself to the land in controversy, and cannot recover upon the weakness of that of the defendant.

In this case, the plaintiff, as daughter and sole heir-at-law of George Antonio Nixon, claims to have the legal title to certain real

estate in the city of San Antonio. The fact of her heirship is not questioned.

The defendants, while claiming in opposition to her, derive their title from the same source as herself. They hold under a deed purporting to have been made in the year 1838 by the said Nixon to one Alfred J. Shelby, and from the latter, through his attorney, Alexander Horton, by mesne conveyances down to themselves.

"To enable the defendants"—(Note. For this portion of the charge, see Plaintiff's Second Bill of Exceptions)—"in the year 1856." Record, page 33.

Now if the deed from Nixon to Shelby was not a forgery, as charged, then the legal title to the land claimed by the defendants necessarily passed to them, and they would have the right to the same. "The plaintiff, by an affidavit"—(see Plaintiff's Bill of Exceptions No. 3); "in fact a forgery." Record, page 44.

By their plea in this case, the defendants not only put in issue the title asserted by the plaintiff, but have suggested that they and those persons whose estate they have in the lands and tenements sued for, have had adverse possession of the same, in good faith, for at least one year next before the commencement of this suit, and have made permanent and valuable improvements on the same during the time they have had such possession; and the value of these improvements they seek to recover, in case the question of title be determined against them.

The first thing to be ascertained by the jury in this case, is whether or not the deed of conveyance from Nixon to Shelby is, in truth, a forgery; and this is a question of fact which they must determine from all the facts and circumstances in evidence before them. To constitute a good and valid deed, the law requires that it should be signed, sealed, and delivered by the party executing it, or by some one authorized to do so for him—such, at least, is the general rule, though by statutory enactment some one or more of these general requisites may be dispensed with, as that of sealing has been by the laws of this State.

"If the jury should be satisfied" (see Plaintiff's Sixth Bill of Exceptions for this portion of the charge)—"evidence before them." Record, page 59.

"Although a delivery is essential" (see Plaintiff's Third Bill of Exceptions for this portion of the charge)—"a sufficient delivery." Record, page 42.

"In respect to evidence" (see Pl'ff's Fifth Bill of Exceptions for this portion of the charge)—"evidence before them." Record, page 53.

If, upon the facts and law as now given to them, the jury should believe that the deed from Nixon to Shelby was not a forgery, then the will return a verdict for the defendants; and if they do so, this will be conclusive of the whole case, and the question of improvements will not be the subject of your inquiry.

"But if the jury should believe" (see Defendants' Bill of Exceptions for this portion of the charge)—"made after that time." Record, page 73.

If the jury is satisfied from the evidence in this case, that the plaintiff has failed to pay the State taxes that accrued on the lands in controversy since 1844, and that the defendants have paid the taxes due on the lands claimed by them respectively during their occupancy of the same, then the plaintiff, by the terms of the statute, forfeits all right to pay for use and occupation, and the jury will not allow the same.

From all the proofs before them, in connection with the law as I have given it, the jury must determine whether the defendants are possessors in good faith of the land sued for. If they find them so to be, they will so say by their verdict, and regard them as entitled to compensation for such permanent and valuable improvements as may have been made by themselves, or by those under whom they claim, on the land during the time they had possession thereof in good faith. In doing so, they will assess separately, according to the proof, the value of the land claimed by each of the defendants, without taking into estimation the improvements on the land, and also will assess the value of the improvements made by each of the defendants, or by those under whom he claims; and, lastly, if they believe that the plaintiff is entitled to any pay for use and occupation, they will assess the value of such use and occupation of the land, or so much thereof as is claimed by each of the defendants up to the present time. THO. H. DUVAL, U. S. Dist. Judge.

Filed June 22d, 1860. M. HOPKINS, Clerk.

And now the plff. and defts. having noted their exceptions, and time being given them to prepare their bills of exceptions, the jury retired, and on the same day, to wit, on the 22d day of June, A. D. 1860, the following entry appears on the minutes of the court:—

PRISCILLA ANN DUFFEILD
vs.
FRANCIS GUILBEAU et al.
} No. 184.

And now came the parties, the plaintiffs by Hancock and West, Geo. F. Moore, and R. A. Hewson, and the defendants by Paschals, their attorneys; and came also the jury, to wit: A. R. Crosier, A. N. Hopkins, W. F. Robinson, E. W. Kinnan, Leander Brown, T. L. Miner, James H. Mathews, John L. Conley, A. C. Hill, John R. Hubbard, F. S. Mayfeild, eleven jurors; H. B. Kinney, one of the jurors empanelled in this cause, for reasons assigned to the satisfaction of the court, and by consent of all parties, having been excused from the panel on the 16th of the month, and the court having charged the jury upon the law, they retired under the charge of an officer of the court to consider of their verdict, and returned into court the following verdict:—

(Verdict.)

"We, the jury, find for the defendant.

"A. N. HOPKINS, Foreman."

(Judgment.)

It is thereof considered by the court, that the plaintiff, Priscilla Ann Duffeild Youngue, and her husband James Youngue, take nothing by their said suit, but the case be dismissed, and the defendants go hence without day. It is further ordered, that the defendants have and recover of the plaintiffs and their security for costs, all their costs in this behalf, in and about this suit expended, to be taxed by the clerk, and for which execution may issue.

(Of Bills of Exceptions.)

And afterwards, time having been granted both plaintiffs and defendants for the preparing, in due order, their several bills of exceptions, and the same having been examined, and signed and sealed by the judge, they are filed, and became part of the record. The plaintiff's bills of exceptions, numbered from one to eight, are in the words, terms and figures, of the following tenor, to wit:—

(Plff's Bill of Exceptions No. 1.)

Plaintiff's bills of exceptions. No. 184. P. A. Duffeild *vs.* F. Guilbeau et al. Plff's bill of exceptions, No. 1. Filed June 29th, 1860. M. HOPKINS, Clerk.

P. A. DUFFEILD vs. F. GUILBEAU et als. } No. 184. In U. S. District Ct. June Term, A. D. 1860.

Be it remembered, that on the trial of the above entitled cause, the pl'ffs proved, that from 1836 down to 1845 or 1846, the property in question, that had been owned by her ancestor, G. A. Nixon, had no improvements on it; all of the improvements having been destroyed by Santa Anna in 1835, until it was improved, in 1846, by the defendants and those under whom they claim; and that in 1839, the plff. was married to W. C. Duffeild, and continued the wife of Duffeild until November, 1854, when Duffeild died; and afterwards the defendants offered the testimony of B. Rush Wallace, taken *de bene esse*, as follows:—

(Testimony of B. Rush Wallace.)

"I have been well acquainted with Mrs. Priscilla Ann Duffeild, formerly Mrs. Henrie, daughter of George Antonio Nixon, since the spring of the year A. D. 1841. Her father died in San Augustine, town and county in Texas. A short time after his death she told me that he had conveyed a drove of horses or mules, or horses and mules, then in Jasper County, in Texas, and some real estate, in-

cluding the most valuable house and lot, and some unimproved lots in San Antonio, Texas, to her uncle, Alfred Shelby, of Jasper County. She said that William C. Duffeild and Alexander Horton had sold the house and lot above referred to for about eight hundred dollars; that they were worth more (perhaps a thousand or twelve hundred dollars), but that she wanted money then, and had rather have the sum for which the sales had been effected, than the fair value of the sold property at a future and perhaps distant day. These statements were made to me when William C. Duffeild was not present.

"The house above alluded to, she spoke of as being stone or brick, or adobe, not a frame or a wooden house, that was or had been the best hotel or other public house in the town or city. Mrs. Duffeild talked frequently and familiarly to me about the property of her father, whose sole surviving heir she represented herself as being. She visited frequently and familiarly at my house in, and afterwards near San Augustine, for some eight or ten years, was always received there as a friend, and acknowledged as such in private and in public. William C. Duffeild, her reputed husband, occasionally visited there, but was never received by me or my family on such terms as the said Mrs. Duffeild was. Yet I was *only not hostile* to him, though I cared but little about him, and Mr. Duffeild was well aware of the nature of my feelings towards him; she well knew from repeated declarations on my part that I was not his, though her friend."

To the introduction of which the plff. objected at the time: Because the same was irrelevant and did not relate to the property in suit, but to different property; because the parol declarations of the plff. (she being a married woman at the time) were not admissible at any time to bind her; because they sought to set up merely equitable defence to plff.'s right to recover; and because the evidence was vague and indefinite as to time, place, circumstances and subject-matter, and was illegal, and calculated to mislead the jury; all of which objections were by the court overruled, and the plaintiff, before the jury retired, excepted, and in further progress of the trial the pl'ff asked the court to charge the jury as follows as to the effect of the purported declarations of the plff. above set forth.

"4th. In examining the evidence, the jury can look to the declarations of the plff. only to aid them in determining whether or not said Nixon did in his lifetime execute the deed alleged to be forged. But if from all the evidence in the case the jury believe that the deed was never signed, sealed and delivered by Nixon in his lifetime, no mere declarations of the plff. after the death of her ancestor (she being then a married woman) can operate in a court of law to pass the title acquired from her ancestor. In order to divest a married woman of her title to land in a manner recognized by a court of law, the acknowledgments and examination of the married woman must be made in accordance with the statutes of this State,

providing the mode in which the estate of a married woman is to be conveyed"— which instruction the court refused, and the plff. at the time and before the jury retired, excepted, and the court further at the instance of the defendants on the same subject charged the jury as follows :—

"6th. If the jury believe the witnesses who have sworn to the statement of Geo. Antonio Nixon and of the plaintiff about the deed of Nixon to Shelby (which evidence stands before you unimpeached), then they will determine for themselves, how far such declarations go to establish the existence of the original deed, and the plaintiff's knowledge of the fact;" to all of which rulings and instructions refused and given as above set forth, the plff. at the time and before the jury retired excepted for the reasons above set forth, and now here tenders this her first bill of exceptions, and asks that the same may be signed, sealed, enrolled, and made a part of the record, which is accordingly done.

THO. H. DUVAL, [SEAL.]
U. S. D. Judge Presiding.

(Plff's Bill of Exceptions No. 2.)

184. P. A. Duffeild *vs.* F. Guilbeau et al.

Plff's Bill of Exceptions No. 2. Filed June 29th, 1860.
M. HOPKINS, Clerk.

Is in words to wit :—

No. 2. P. A. DUFFEILD vs. F. GUILBEAU et als. } In the United States District Court, No. 184. June Term, A. D. 1860.

Be it remembered, that on the trial of the above entitled cause the deft., with a view to the introduction of secondary evidence of the execution and contents of a purported deed from G. A. Nixon to A. J. Shelby for the *locus in quo*, dated 10th day of October, A. D. 1838, and which deed was attacked at the time it was offered by affidavit of plff. as a forgery; which said purported deed and affidavit of plff. as to its forgery will be found set out in full in other bills of exceptions in this cause (to which to prevent repetition) reference is here made, read to the court the following affidavit :—

District Court of the United States, January term, 1859, at Austin.

PRISCILLA ANN DUFFEILD vs. JOHN JAMES et al.

(Affidavit of John James.)

John James, being duly sworn, deposes and says, that the original deed from Geo. A. Nixon to Alfred J. Shelby, and the original power of attorney from A. J. Shelby to A. C. Horton, and the original conveyance from A. C. Horton, an attorney in fact of A. J.

Shelby, to Michael Quinn, are not in the possession of this affiant; and, as this affiant is informed and believes, they are not in the possession of either of his co-defendants; affiant ~~only~~ believes the two first-named originals were retained by the said A. C. Horton; and, as he is informed and believes, they were afterwards delivered to the plaintiff and her husband; and the last-named original, he believes, was retained by and in the possession of Michael Quinn, who removed from the State some ten years ago, and whose place of residence is unknown to affiant, and, as he is informed and believes, to his co-defendants, and that said originals are beyond the control or power of this affiant or his co-defendants.

JOHN JAMES.

Sworn to and subscribed before me, this 7th day of Jan'y, A. D. 1858. In testimony whereof, I hereunto sign my name and affix the impression of my official seal, at San Antonio, the day and date last above written.

G. H. NELSON,
[SEAL.] Notary Public, B. C.

And the def'ts, also, in the same connection and at the same time, read to the court the following affidavit and rule and notice, and the replies to the same:—

(Affidavit, Rule, and Notice, Def'ts.)

("Endorsed") 184, P. A. Duffeild *vs.* F. Guilbeau *et al.*

Affidavit and rule, filed June 14, 1860, M. Hopkins, Clerk—rec'd and returned executed, this 14 June, 1860, by handing to each of the within-named att'ys—R. A. Henson, Geo. F. Moore, John Hancock, and C. F. West—certified copies of the same, by the clerk, this 14 June, 1860, Wm. C. Young, U. S. M., and which affidavit and rule is in words to wit:—

PRISCILLA ANN DUFFEILD
vs.
F. GUILBEAU and Others. } No. 184.

The defendants, J. A. and Geo. W. Paschal, on oath, say, that they are informed and believe, that when the property in dispute was purchased from Shelby, that the deed of Geo. Antonio Nixon to the said Alfred J. Shelby, dated 10th October, 1838, was submitted and shown to Quinn, and to Maverick, and was put upon record, they believing it to be genuine; that the same was returned to Duffeild, because there was other land embraced in the title, and never passed to the hands of the vendees, Maverick and Quinn; that their clients and themselves have made diligent search at San Antonio and Nacadochez, for said deed, and cannot find it; that deponents verily believe that it is in the possession and under the control of the plaintiff and her counsel; and they hereby give notice to the plaintiff and their attorneys to produce said deed, and to say, under oath, what they know of its existence, loss, or destruction.

And they will move that the trial of the cause be postponed until this rule be answered.

J. A. PASCHAL,
GEO. W. PASCHAL.

The above affidavit subscribed and sworn to, this 13th June, 1860, before me.

MATTHEW HOPKINS, Clerk.

The counsel, R. A. Henson, Geo. F. Moore, John Hancock, Chas. S. West, are required to take notice of the above rule, and to produce the deed, and file it among the papers.

J. A. and GEO. W. PASCHAL.

13th June, 1860.

The affidavit and answer of R. A. Henson, to the foregoing rule, is in words to wit:—

PRISCILLA ANN DUFFEILD
vs.
F. GUILBEAU et al.

R. A. Henson, one of the counsel for pl'ff, in the above entitled cause, in answer to a notice served upon him, says, that he has not got in his possession, has never seen, and knows nothing of, any pretended deed executed by George Antonio Nixon, in favor of Alfred J. Shelby, for the property in controversy in this suit. He further states, that he does not believe, and has no reason to believe, that the pl'ff, his client, has, or ever had, possession of such pretended deed. He answers that he knows nothing of the existence of such pretended deed, further than the record of the county of Bexar, State of Texas, show, and that he knows nothing at all of its loss or destruction. Further answering, he says, that he has always been under the impression and belief that defendants, or some one of them, had such pretended deed in possession. He says that he has not now under his control, and never had under his control, nor does he believe that pl'ff has, or ever had, under her control, or in her possession, such pretended deed. He says further, that he does not believe that any of the counsel of pl'ff have now, or have ever had, possession, control, or knowledge of such pretended deed, further than is shown by the records, as above.

R. A. HENSON.

Subscribed and sworn to before me, this 14th June, 1860.

M. HOPKINS, Clerk.

The affidavit and answer of Geo. F. Moore to the foregoing rule is in words to wit:—

PRISCILLA ANN DUFFEILD
vs.
F. GUILBEAU et al.

United States District Court, Western District of Texas, at Austin.
June Term, A. D. 1860.

Personally appeared in open court, George F. Moore, one of the

attorneys of the plaintiff in the above entitled case, and by way of response to the rule this day filed upon him by defendants, to answer as to his knowledge of the existence, loss, or destruction, &c., of a pretended deed, alleged by def'ts to have been executed by George Antonio Nixon, on the 10th day of October, 1838, after being duly sworn, say, that if any such deed or instrument does now or ever did exist, that the same is not now and never has been in his possession or control, and that he has no knowledge or information that any such instrument ever did exist; and he further states that he has not the possession or control, and knows of no person who has the possession or control of any instrument purporting to be such deed of conveyance, or anything of like kind or description, or any paper or instrument purporting to convey any real estate whatever situated in the county of Bexar, by said Nixon to said Shelby; and he has no knowledge or information that leads to the belief or supposition that such a pretended instrument ever did exist, except that he has seen the certified copy from the office of the Clerk of the County Court of Bexar County, or said pretended deed and the facts disclosed in the depositions on file in this cause.

Affiant further states that he was employed some four years since as assistant counsel of the plaintiff with Gen'l J. P. Henderson, Ancos Clark, and Richard S. Walker, and at the time he found in the possession of said Clark & Walker a large trunk of papers, which he was informed by his associate counsel were all the papers belonging to or that had come into the possession of said plaintiff in any manner connected with her business or property claimed by her in the State of Texas. Affiant further states that he was subsequently informed by George W. Shelton, who was the attorney in fact of said pl'ff, and who came with her from the State of Mississippi to Texas for the purpose of attending to said business, that neither he nor said pl'ff had in their possession or control or had any knowledge or information about any papers whatever, except those in the possession of her attorneys as aforesaid, in any way connected with this suit or any other matter in which she was interested in this State.

Affiant further states that he has had frequent occasion to examine said papers in said trunk for different papers connected with different matters of business of said plaintiff with which since he has been her attorney he has been connected, and that he is well satisfied from said repeated examinations that no such deed, or any paper purporting to be such, is among said papers; and he further states that his said associate counsel and said attorney in fact of said plaintiff, that they had never seen any such instrument, and did not believe that there was any such in existence.

GEORGE F. MOORE.

Subscribed and sworn before me, this 14th day of June, A. D. 1860. MATTHEW HOPKINS, Clerk.

The affidavit and answer of John Hancock to the rule, served upon him by the attorneys of defendants, is in words to wit:—

U. S. District Court, Western District of Texas, June Term, 1860, at Austin.

PRISCILLA A. DUFFEILD
vs.
F. GUILBEAU and Others.

In response to the notice in the above entitled cause just served on him, John Hancock, one of the attorneys for said plaintiff, requiring him to answer under oath what he knows of the existence, loss, or destruction of a certain purported deed in said notice described, said Hancock, without admitting the right of the attorneys making said motion and requisition, or of any one else, to make such motion and requisition, and, on oath, states, that he knows nothing whatever of said deed save and except what he learns from the papers in this case and the case in this court of said plaintiff, Duffeild *vs.* S. A. Maverick, that these papers disclose a certified copy of said deed from the county clerk of Bexar County. That he, respondent, knows nothing whatever about said original, and cannot say whether it was returned to Duffeild; nor does he believe the said makers of said affidavit to said notice know any such thing. That if said plaintiff ever had said deed in her possession or under her control, it is not known to this respondent; that he has never seen said original; has not now, and never did have the same in any way under his control or authority; and this respondent begs to state, in reply to the assertion made by said attorneys making said motion, "that defendants verily believe that it is in the possession and under the control of the plaintiff and her counsel;" that so far as this respondent is concerned, that he has neither the possession or control of said deed, nor does he believe said plaintiff has, nor does he believe any circumstance exists to induce said defendants to "believe" any such thing; if said attorneys making said affidavit to said motion do believe that said defendants do "believe," this respondent "believes" that no sufficient facts exist to warrant said attorneys so making said affidavits in the "belief" that this respondent has said original deed, or knows anything about what has become of it. And respondent regards said statement, so far as it regards him, as wholly gratuitous and without foundation in any respect. JOHN HANCOCK.

Subscribed and sworn to before me this 14 June, 1860.
M. HOPKINS, Clerk.

In the same connection, the affidavit and response to the foregoing rule is in words to wit:—

P. A. DUFFEILD
vs.
F. GUILBEAU et al. } No. 184.

In U. S. Dist. Court. June Term, 1860.

And now at this day comes Charles S. West, one of plaintiff's attorneys in the above cause, and for answer to plaintiff's notice, to produce the pretended deed from G. A. Nixon to A. J. Shelby, purporting to be dated Oct. 10th, 1838, and the same referred to in the affidavit of plaintiff's attorneys, filed June 13th, 1860, would say, under oath, that said pretended deed is not now and never was in the possession of the said C. S. West, nor did he ever see it, nor is it to his knowledge in the possession of any of his associate counsel or of the plaintiff; nor does he know where it is, nor has he ever heard where it was; nor does he know where it is, nor is it under his control, or under the control of the plaintiff, so far as this affiant knows or believes; and, further, swears that so far as he knows and believes, that all of said real property described in said pretended deed that could be found and identified, if not the whole of it, was sold to the said Maverick and other persons, in or near San Antonio; and he supposes, if said pretended deed be not lost or destroyed, it would be and is in the possession of those persons of whose titles it constituted a muniment, and not of the said plaintiff, who, so far as this affiant knows, claims no rights under said pretended deed, and never saw the same so far as this affiant knows; and, further, as to existence of said pretended deed, so far as affiant knows, no such deed ever had any existence, and he does not know whether the same be lost or destroyed or not; and supposes that matter is quite as fully in the knowledge of the attorneys claiming benefits under it, as the attorneys of those representing adverse interests; and further this affiant saith not. C. S. WEST.

Sworn to and subscribed before me this 14 June, 1860.
MATTHEW HOPKINS, Clerk.

And thereupon the defendants offered to introduce secondary evidence as to the existence, loss, contents, and execution of the said deed as set out in other bills of exception in this cause; and thereupon the plaintiff objected to the introduction of any secondary evidence as to said deed, because the said predicate above stated as pretended to be laid by the defendants, was wholly insufficient and not in accordance with law; and that the affidavit and notice above set forth do not show that the original could not be procured, or is not in existence, or that the defendants had exhausted all the means in their power to obtain the same, but show the contrary; all of which objections were by the court overruled and secondary evidence

permitted to be introduced as to said deed, and the plaintiff at the time excepted to the ruling of the court, and in the further progress of the same cause, the court charged the jury as follows, of its own motion, with regard to said predicate and secondary evidence as to said deed.

"To enable the defendants to deraign their title from this source, the law required that they should exhibit among other things, the original deed from Nixon to Shelby, and power of attorney from Shelby to Horton, or show satisfactorily to the court why this could not be done. Having shown by proper proof that they had not the possession or control of the said originals, or the power to acquire the same, their production is dispensed with, and they have been allowed to introduce a copy of the same, as recorded in Bexar county in the year 1846."

To which charge the plaintiff at the time and before the jury retired excepted as being illegal and unauthorized, and furthermore on the same subject the court at the instance of the defendants charged the jury as follows:—

"2. The deed having been duly acknowledged and recorded, and the original lost, destroyed, or not produced on notice, the copy is before you with all the effect of original evidence, unless the jury believe from the evidence that the original itself was a forgery, as sworn by the plaintiff."

To all of which the plaintiff at the time and before the jury retired objected for the reason above stated, and all of which objections were overruled by the court, and thereupon at the time the plaintiff excepted, and now tenders this her second bill of exceptions, and asked that the same may be signed, sealed, enrolled, and made a part of the record, which is accordingly done.

THOS. H. DUVAL, [SEAL.]
U. S. District Judge, presiding.

(Plaintiff's Bill of Exceptions No. 3.)

P. A. DUFFEILD
vs.
F. GUILBEAU et al.

No. 184.
In U. S. District Court,
June Term, 1860.

Be it remembered that on the trial of the above entitled cause, the defendants to prove the existence, genuineness, and due execution of the purported deed from Nixon to Shelby, in addition to the evidence of Wallace heretofore set forth, to which reference is here made, offered the depositions of the following witnesses, all of which had been taken *de bene esse*. The deposition of James B. Johnson is as follows:—

(Deposition of J. B. Johnson.)

"I have heard Major George Antonio Nixon mention the circumstance of having made a deed to some property at San Antonio, to Alfred J. Shelby, but do not recollect what it consisted of, but to the

best of my recollection it was town property, meaning town lot or lots in the city of San Antonio. I am acquainted with Alfred J. Shelby, the uncle of Mrs. Priscilla Ann Duffeild, and is the same person referred to above; I was well acquainted with K. L. Anderson and Albert G. Kellogg, who resided in this county, to wit, San Augustine county, for many years, and were citizens of said county up to the time of their death, and I am satisfied that said Anderson and Kellogg are both dead."

(Deposition of Alex. Horton.)

The deposition of Alexander Horton in words as follows:—

"In the latter part of the year A. D. 1846 I was proposing to "visit San Antonio, Texas, on business of my own, when William "C. Duffeild (with whom and his family I had always been on good "terms) asked me to accept and take a power of attorney from "Alfred J. Shelby, of Jasper county, Texas, to pass the title to "some property there."

"Some time after giving my consent, Duffeild brought the power "of attorney from said Alfred Shelby with an order on me in his, "Duffeild's, favor for the proceeds of the sales of the property "described in the power of attorney when sold. Duffeild then "accompanied me to San Antonio, where part of the property "described in said power of attorney is situated, and the proceeds "of the sales thereof was received by said Duffeild in every in-"stance; I having neither asked nor received any of the proceeds." (*Note by the clerk. Here a portion of the testimony was ruled out by the court.)

"I never accepted but one power of attorney from said Alfred "J. Shelby for any purpose whatever, and that was the power of "attorney above described. And I think the house and lot sold "under said power of attorney was sold for eight hundred dollars.

A. HORTON.

"I further state that Charles Epps was a man in good standing "in this community in the year 1846, and that he was at the time "County Clerk of San Augustine county, Texas. A. HORTON."

(De bene esse Deposition of Alfred J. Shelby.)

The deposition of Alfred J. Shelby, together with the list of property referred to in the deposition, is in words to wit:—

"That some years after the death of George Antonio Nixon, the exact time I cannot recollect, at the request of William C. Duffeild I signed a paper which I did not read, and which Duffeild informed me was a conveyance back of property in San Antonio which he said had been deeded to me by said Nixon during his life-time. That a list of the various property deeded to me by Nixon is hereby presented; said list was copied from an original list by Mr. Manidiere, the attorney with Mrs. P. A. Duffeild about two years

ago. The said original was signed underneath George Antonio Nixon; said original was handed me by Duffeild at the time I signed the document to which I thought reconveyed back the said property. The original was retained by said Manidiere, he leaving the copy at my request.

"That after Nixon's death, which happened about the 27th April, 1843, I gave up to Duffeild and wife a cavalcade of horses which had been transferred to me by Nixon during his lifetime, and which I had not really purchased.

"That my sister, the wife of George Antonio Nixon and the mother of Priscilla Ann Duffeild, died about the year A. D. 1825 or 1826, I think at or near San Felipe, Texas.

"That B. X. Mudd is dead. William Skeaghy resides, I believe, in New Orleans.

"That I saw the transfer to me from Nixon of the property specified in said list as being held by bond from Smith. The transfer was, I think, on the back of the bond.

"That I never paid one dollar for the purchase, or received one dollar out of the proceeds of sale of this property. If Duffeild had requested me I should have made the power of attorney to Col. A. Horton."

"The within list of property appended below and around the town of San Antonio, Texas, together with W. Smith's title bond for a league of land granted to Joseph Delgado, was handed to me by Wm. C. Duffeild. I am not apprised of any transfer of said property to me by Geo. Antonio Nixon, and have no claim to it. But if there is any title in me I will convey such as I have to P. A. Duffeild, the only heir of Go. Antonio Nixon.

"The list below is the one referred to by A. J. Shelby, the witness. W. L. MAUND, Clerk D. C. J. C.

1 labor of land north of town, joining the little spring.
1 house and lot on river bank.
1 lot in front Jno. McMillan's house on river.
1 lot on same street.
1 small lot on same street.
1 small lot on east side of river.
1 labor of land on the road leading to the mission, E. side of the river.
1 labor of land on the Mission Espada, west side of the river.
1 league land granted to Lanfa Delgeda—John W. Smith's title bond in $5,000 to Nixon for title transferred by Nixon to A. J. Shelby.

On the reverse page, to wit:—

Land Warrants.

	Acres.		
1	320	No. 4385,	Benj. H.
1	640	1128,	Joseph S. Johnson.
1	640	2121,	R. W. Wade.
1	320	2069,	L. W. Ludlow.
1	320	2084,	Jno. Brown.
1	640	2068,	J. C. Tramall.
1	960	2071,	Jno. G. Stanbury.
1	640	2767,	J. C. Lanier.
1	320	4382,	C. F. Klein.

Dep. Land Office, Nacogdoches, March 17th, 1841.

Sold by Nixon to Shelby. A. A. NELSON."

The deposition of S. W. Blunt is as follows:—

(Deposition of S. W. Blunt.)

"About the year 1850 I was at the house of Alfred Shelby in Jasper County, Texas, and speaking of the property of G. A. Nixon, as the administrator of Geo. A. Nixon, I called on him to know if he had any of the land-titles of Nixon, as Nixon I understood lived with him a part of his time before his death. When I was at Shelby's house, Duffeild and wife had separated, and Mrs. Duffeild was staying a part of her time with Shelby, who is her uncle. During my visit I heard Alfred Shelby say he had given a power of attorney to Alexander Horton to sell some property in the town of San Antonio, that Wm. C. Duffeild told him that he found a deed among the papers of G. A. Nixon, for some property, and he, Duffeild, thought he did it for the purpose of saving it, &c. Shelby also remarked to me that he had never purchased any property of Nixon."

And the pl'ff, also, during the progress of the trial, offered in evidence upon *the same point*, the testimony of A. J. Shelby, taken under commission, with interrogatories and notice, substantially as follows:—

(Deposition of A. J. Shelby, under commission.)

Int. 1st. "Are you acquainted with the parties to the above-entitled cause? and were you acquainted with George Anto. Nixon?

Ans. "I am acquainted with P. A. Duffeild and George Anthoni Nixon, but does not know the defendant, Samuel A. Maverick.

Int. 2d. "What relationship or connection exist between the plaintiff and said Nixon?

Ans. "Witness answers that P. A. Duffeild is a daughter of the G. A. Nixon.

Int. 3d. "Is said Nixon living or dead? If dead, where did he die?

Ans. "Witness answers that I believe G. A. Nixon is dead; think he died in April, A. D. 1843.

Int'g. 4th. "Do you know whether or not said Nixon ever owned or claimed a house and lot in the city of San Antonio, on the San Antonio River, once occupied by said Nixon as a storehouse, and fronting the street; also large lot containing about four acres in the bend of the river in said city; also two other small lots in said city; also one lot on the opposite side of the San Antonio River, fronting the four-acre lot; also one labor of land containing one hundred and seventy-seven acres, north of said city, joining the little spring, with water privileges; also one labor leading to the Mission, east side of said river; and also one other labor of land at the Mission Espada, west side of said San Antonio River?

Ans. "Witness answering, says that I do not know for certain whether G. A. Nixon ever owned said lots or parcels of land in said interrogatory specified, or not; but I believe, however, that he owned property consisting of lands, &c., in the said city of San Antonio.

Int'g. 5th. "Do you know whether or not said Nixon ever owned or claimed any lots or parcels of land lying in or near the city of San Antonio, and county of Bexar? If so, describe the same particularly.

Ans. "Witness answering, states, I believe the said Nixon owned property, land, &c., in the said city of San Antonio, but never having been in said city, consequently cannot describe the same.

Int. 6th. "If you say in answer to the 4th and 5th interrogatories that said Nixon owned or claimed any lots or parcels of land in or near said city of San Antonio, state if you know whether or not said Nixon made any disposition of the same during his lifetime. If you say that he disposed of said property or any part of the same, state how you know the fact? to whom did he dispose of it? for what did he dispose of it? and when did he dispose of said property, how was it done, who was present at the time? Were there any deeds or written conveyances subscribed for the same? if so, were there any subscribing witnesses to the same? who were they? Where are said original deeds? If you say they are in your possession, attach them to your answers to these interrogatories. Were said deeds at any time in your possession or control? If so, how did you get them, and when was it? How long did you have them? For what purpose did you have the said deeds, and how did you dispose of them? When you last saw said deeds were they probated for record? If so, by and before whom was this done, and when did you last see said deeds?

Ans. "Witness answers: I do not know of said Nixon ever disposing of said property, lands, &c., during his lifetime.

Int'y 7th. "Did you or did you not ever purchase or acquire any of said property before referred to, from said Nixon; if yea, when did you acquire it; and how and for what consideration did you acquire the same? Who was present at the time, or were cognizant of the fact?

Ans. "Witness answers that I never did.

Int'y 8th. "If in answer to the last interrogatory you say that you ever acquired any of said property from Nixon, have you disposed of the same? If so, how and where, and to whom, and for what consideration did you dispose of the same?

Ans. "Witness answers that he never did purchase or acquire said property."

And the plaintiff proved also, on the trial, that she married W. C. Duffeild in 1839, and remained his wife until in November, 1854, when Duffeild died in Mississippi, where they both then resided; upon these facts the court charged the jury, of its own motion, on the subject of the delivery of a deed and its binding force on the plaintiff, as follows:—

"Although a delivery is essential to the validity of every deed, no particular form or ceremony is necessary. It may be by words without acts, by acts without words, or by both. It may be made by the grantor himself, or by any one under his authority. Nor is it indispensable that the delivery should be to the grantee, or to one authorized by him to receive it. For if it be made even to a stranger on behalf of the grantee, and to his use, it is a good delivery, although the grantee might in fact be ignorant of the conveyance; for if the delivery be absolute, the assent of the grantee is presumed, from the fact that the conveyance is beneficial to him. Anything which shows an intention on the parts of the grantor and grantee, that the deed shall presently become operative and effectual; that the grantor is to lose control over it, and that the grantee is to possess the estate, constitutes a sufficient delivery."

And the court also, at the instance of the defendant, charged the jury as follows:—

"This is not to be regarded as the contest of creditors against the deed, nor as a contest between deeds of different dates; but as a contest, just as though Nixon himself was the plaintiff, his heir being bound by all his acts; and if he made the deed, the question of consideration is of no consequence, because as between Nixon and Shelby, or Shelby's vendors, the deed was binding, whether there was any consideration or not, or whether the deed was actually delivered to Shelby or not. If it was Nixon's deed, and Shelby acted under it, she is bound by those acts."

To all of which charges and instructions given, the plffs. at the time, and before the jury retired, excepted, as not being applicable to the facts proved, and not being warranted by the evidence, and being illegal, and calculated to mislead the jury; all of which objections, however, the court overruled, and the plaintiff now tenders this her bill of exceptions.

And further, in the same connection, the plff. having filed her affidavit, that the said deed from Nixon to Shelby was a forgery, which affidavit is set out in another bill of exceptions in this case, and to which (to prevent repetition reference is here made), thereupon, during the progress of the said cause, the court of its own

motion charged the jury as follows, with reference to the effect of said affidavit, and the position in which the parties pl'ff. and deft. respectively stood as to the deed alleged to be forged, to wit:—

"The plaintiff, by an affidavit, made some time during the progress of this cause, attacks the said deed, by declaring that she believes it to be a forgery. This affidavit furnishes no proof whatever to the jury, that such deed is a forgery. It merely lays the foundation, or affords a basis, upon which the plaintiff might introduce evidence to sustain the charge, and show to the satisfaction of the jury, if she could, that it was, in fact, a forgery." And the court further, at the instance of def't, charged the jury as to the effect of said affidavit, as follows:—

"Her affidavit proves nothing about the forgery; but only lays the foundation, to enable her to prove the circumstances conducing to prove that fact."

And further, in the same connection, and on the same point, the court refused the following instruction, asked by the pl'ff, as to the effect of said affidavit, to wit:—

"The pl'ff, having filed an affidavit that the purported deed from Nixon to Shelby is a forgery, and that it was never executed by said Nixon, it devolves upon the d'fts, in order to enable them to hold said property under said deed, to show, by evidence satisfactory to the jury, that said deed was, in fact, signed, sealed, and delivered by said Nixon in his lifetime—otherwise the fee (the legal title) to the property remained in said Nixon, at the time of his death, and was cast, by descent, on his heirs."

To all of which charges and instructions, given and refused, as above set forth, the pl'ff at the time excepted before the jury retired, and now tenders this her third bill of exceptions, and asks that the same may be signed, sealed, enrolled, and made a part of the record, which is accordingly done.

T. H. DUVAL, [SEAL.]
U. S. Dist. C., Presiding Judge.

(Pl'ff's 4th Bill of Ex's.)

P. A. DUFFEILD
vs.
F. GUILBEAU and Others.

No. 184, in U. S. Dist. Ct., June term, A. D. 1860.

Be it remembered, that on the trial of the above entitled cause, the def'ts offered in evidence the following deed, forming a link in the pretended chain of conveyance from G. A. Nixon, the plaintiff's ancestor, under whom both pl'ff and def'ts claim, down to the def't, which deed is as follows:—

(Deed, Wood to McClellan.)

"The State of Texas, Bexar County.

"Know all men by these presents, That I, Mary E. Wood, of the county of Bexar, in the State aforesaid, have been duly appointed by the County Court of Bexar county, guardian of the estate and

person of Frances L. Wood, minor; and, upon a sufficient representation to said court, at the November term, 1852, an order was made and entered of record, requiring me to sell according to law, the following property, to wit: An undivided half-interest in a house and lot, situated in the city of San Antonio, and county of Bexar, lying and being situated on Commerce Street, in said city, bounded on the south by said Commerce Street, on the east by a lot now belonging to John Vance, on the west by a house and lot of John James, and on the north by the San Antonio River, which order of court is, in substance, as follows: It is ordered, adjudged, and decreed by the court, that the guardian of Frances L. Wood, a minor, after having given at least twenty days' notice, proceed to sell at public auction, to the highest and best bidder, for cash, on Tuesday, the first day of March, A. D. 1853, between the hours of 10 A. M. and 4 P. M., in front of the court-house door, in the city of San Antonio, the following described property, to wit: An undivided half-interest in a house and lot, situated in the city of San Antonio, and county of Bexar, lying and being situated on Commerce Street, in said city, bounded on the south by said Commerce Street, on the east by a lot now belonging to John Vance, on the west by a house and lot of John James, and on the south by the San Antonio River.

And, in accordance with said order of sale, on the third day of February, A. D. 1853, I gave notice, in the manner prescribed by law, and according to the order of the court, of the sale of the said property, as above described, to take place on the first Tuesday of March, A. D. 1853.

And afterwards, to wit, on the first day of March, A. D. 1853, it being the first Tuesday in said month, I sold the same in accordance with the decree of the court and the notice of the sale, at public auction, to the highest bidder for cash, at the court-house door of the county of Bexar, within the hours prescribed by law, when John S. McClellan offered the sum of five hundred and seventy-five dollars, which was the highest and best bid, and no one bidding any more, the said property was sold to him the said John S. McClellan; and I, as guardian aforesaid, afterwards made a return of said sale, under oath, to the said county court, and said court at the February term, 1853, thereof, entered of record a decree of confirmation of said sale, of which the following is the substance, to wit:—

In this case comes the guardian of the estate and person of Frances L. Wood, minor, and presents to the court, duly verified by affidavit, a return of sale made by her in obedience to an order of sale made and entered at the late January term thereof, on Tuesday, the first day of March, A. D. 1853, that being the first Tuesday in said month, between the hours of 10 A. M. and 4 P. M., at the court-house door in the city of San Antonio, at public auction to the highest and best bidder, for cash, the following described property, belonging to the said Frances L. Wood, minor, to wit: An undivided half interest in a house and lot, situated in the city of San

Antonio, in the county of Bexar, which lot fronts on Commerce Street eighteen varas, and runs back with the same width to the San Antonio River, and is bounded on the south by said Commerce Street, on the east by a lot of Jno. Vance, on the north by the San Antonio River, on the west by a lot of John James, whereupon John S. McClellan offered the sum of $575 $\frac{00}{100}$, which being the highest and best bid, the said property was sold to said John S. McClellan, &c. &c.; and, the court having examined the said account of sale, and inquired into the manner in which said sale was made, and being satisfied that it was fairly made and in conformity with law, therefore it is ordered by the court, that said account of sale be approved and recorded by the clerk; and it is ordered, adjudged, and decreed by the court, that said sale be in all things confirmed, and that the guardian of the estate and person of Frances L. Wood, minor, aforesaid, execute a conveyance to the purchaser of said property according to law.

Now, therefore, I, as guardian of the estate and person of Francis L. Wood, minor, by virtue of my appointment, the decree of sale, confirmation of sale, and proceedings of said court, and by virtue of the law and the premises, and in consideration of the sum of five hundred and seventy-five dollars to me in hand paid by the said John S. McClellan, which is acknowledged to have been received as aforesaid, have granted, bargained, sold, and released, and do by this act grant, bargain, sell, and release unto the said John S. McClellan, his heirs and assigns forever, the property as hereinbefore described in the order of conformation of sale: To have and to hold the aforesaid property to him, the said John S. McClellan, his heirs and assigns forever, with all the rights thereunto belonging or in any wise incident or appertaining, hereby warranting and defending the title, only to the extent and in the mode by which I am by law required, as guardian, to do, and no further.

In testimony of all which, I have hereunto set my hand and official seal, as guardian (scrawl for seal) at San Antonio, this seventh day of March, A. D. 1853.

M. E. WOOD, [L. S.]
Guardian of F. L. Wood.

Witnesses: A. SUPERVIELE,
JOHN VANCE.

The State s, Bexar County.

Before me, Sa S Smith, clerk of the County Court of said county, personally ..peared A. Superviele, to me well known, who, being by me duly sworn, deposed and said that Mary E. Wood, guardian of the estate and person of Frances L. Wood, minor, in his presence acknowledged that she had signed, sealed, and delivered the above-annexed and foregoing instrument of writing, and he heard her declare the same to be her act and deed, as guardian as aforesaid, for the purpose and considerations therein stated, and that he, de-

ponent, together with John Vance, signed the same as witnesses, at the request of the said Mary E. Wood.

In testimony whereof I have hereunto signed my name and affixed the seal of the County Court of said county at office in San Antonio this twelfth day of March, A. D. 1853.

County Court, (scrawl) Bexar County, Texas.

SAM. S. SMITH, Cl'k C. C. B. Co.

The State of Texas, County of Bexar.

I, Sam. S. Smith, clerk of the County Court of said county, do hereby certify that the above and foregoing instrument of writing was filed for registration in my office the 12th day of March, A. D. 1853, at 11½ o'clock A. M., and duly recorded the 9th day of April, A. D. 1853, at 6 o'clock P. M., in the records of said county, in book J, Nos. 2, 319, 320, and 321. Witness my hand and the seal of the County Court of said county, at office, in San Antonio, the day and year last above written.

[SEAL.]

SAM. S. SMITH, Cl'k C. C. B. Co.

To the introduction of which at the time when offered the plaintiff objected, because the orders and decrees on which the sale purported to be based were not produced, and the defendants not having produced them, the court, notwithstanding the objection of plaintiff, permitted the said deed to be read in evidence; to all of which the plaintiff at the time and before the jury retired excepted, and now tenders this her fourth bill of exceptions, and asked that the same may be signed, sealed, enrolled, and made a part of the record, which is accordingly done.

THOS. H. DUVAL, [SEAL.]
U. S. District Judge, presiding.

(Plaintiff's Fifth Bill of Exceptions.)

P. A. DUFFEILD vs. F. GUILBEAU et al. — No. 184. In U. S. Dist. Court, June Term, 1860.

Be it remembered that on the trial of the above cause, the defendants introduced the depositions, taken *de bene esse*, of Wallace, Blunt, Johnson, Horton, and Shelby, heretofore set out in other bills of exceptions; and there was the following agreement on file in said cause between the counsel, which agreement is as follows:—

(Agreement as to taking testimony.)

P. A. DUFFEILD vs. S. A. MAVERICK. — No. 183. In U. S. Dist. Court, Austin, January Term, 1858.

It is hereby agreed that in the above entitled cause, and in the

other causes in which P. A. Duffield is plaintiff, and Maverick, James, and others are defendants, the testimony of witnesses residing out of the county of Travis may be taken in conformity with the rules governing the State practice, and that the depositions so taken in the case of Duffeild *vs.* Maverick may be used by either party in the other causes in which the same plaintiff sues against James and others, subject of course to all legal exceptions as to the competency, relevancy, and admissibility of the evidence without objection as to their being taken under the State practice. Oct. 7, 1859.

DENISON, HANCOCK & WEST,
for Plaintiffs.

J. A. & GEO. A. PASCHAL,
Attorneys for Defendants.

It is agreed that all testimony taken in the case No. 184 in this court, in which P. A. Duffeild is plaintiff and Gilbeau, James, et al. are defendants, may be used on the trial of this cause with the same effect as if the same was taken in this cause, subject to all exceptions except as to the manner and form of taking and returning the same. May 21, 1859.

DENISON, HANCOCK & WEST,
for Plaintiff.

E. M. PEASE,
for Maverick.

And the evidence of the above named parties were taken *de bene esse* after said agreement was entered into, and on file, and thereupon during the progress of said cause the plaintiff asked the court to charge the jury as follows, with reference to the weight and credit to be given to such *de bene esse* depositions, as follows.

(Refused Instruction as to Deposition *de bene esse.*)

"P. A. DUFFEILD vs. F. GUILBEAU et al. } United States District Court, Western Dist. of Texas, at Austin, June Term, 1860.

In this case the plaintiff asked the court to instruct the jury, that when a witness resides more than one hundred miles from the place of trial, and neither the opposite party or his attorney reside within that distance of the place of taking the testimony, the act of Congress of 1789 permits and authorizes the deposition of such witness to be taken *de bene esse* without *notice* to the opposite party or his attorneys, and such testimony is not subject to objection because taken ex parte, but the same should be taken and considered by the jury in connection with the other testimony in the case. Yet as testimony thus taken in some cases is calculated to elicit only such a partial statement of the truth as may have the effect of entire falsehood, in closely contested cases of fact, testimony thus obtained

must always be unsatisfactory and liable to suspicion, especially if the party has had time and opportunity to take it in the regular way.

HANCOCK & WEST,
HENSON & GEO. F. MORE,
Attorneys for Plaintiff."

Refused.
THOS. H. DUVAL, U. S. Judge.

Which instructions the court refused to give, but of its own motion charged the jury as follows :—

" In respect to evidence the rule is this: It is the duty and right of the court to determine what is, and what is not legal evidence, and it is the province of the jury to determine the weight and degree of credit due to the testimony admitted before them by the court. And this rule applies to all testimony, whether it be in words spoken or by writing. Ever since the establishment of courts by the U. States, the practice has prevailed of taking the deposition of witnesses *de bene esse* who reside more than 100 miles from the place where the cause is tried. This is done by virtue of an act of Congress, and no notice is required to the opposite party or his attorney. The admission of depositions taken in this way is strictly guarded by the courts. It is their duty to see that the law, under which they are taken, is rigidly complied with; but when this is done, and they are admitted in evidence, then they stand like all other testimony before the jury, subject to such credit and weight as they think proper to give them. But while the jury have the power, they have not the right to disregard this any more than other evidence before them." To which instruction refused and charge given the pl'ff at the time and before the jury retired excepted as being illegal and erroneous, and the objection being overruled by the court, the pl'ff now here tenders in open court this her fifth bill of exceptions, and asked that the same may be signed, sealed, enrolled and made a part of the record, which is accordingly done.

THO. H. DUVAL, [SEAL.]
U. S. Dist. Judge, presiding.

(Pl'ff 6th Bill of Exception.)

P. A. DUFFEILD
vs.
F. GUILBEAU *et als.*
No. 184. In U. S. Dist. Ct.

Be it remembered that on the trial of the above cause after the ruling of the court, as to the sufficiency of the predicate laid by defts. for the introduction of secondary evidence as to the deed from G. A. Nixon to A. J. Shelby, all of which has been set out in another bill of exceptions in this case, and to which (to prevent repetition) reference is made, the pl'ff read to the court the following affidavit, which had not been previously filed, as to the forgery of said

deed (after objection by defdt.) in support of their objections to the introduction of the copy of said deed, which affidavit is as follows:—

No. 179.

(Predicate and Affidavit of Forgery.)

Republic of Texas, County of San Augustine.

(Predicate and Affidavits.)

Be it rembered that I, George Antonio Nixon, of the county of San Augustine and Republic of Texas, do hereby, for and in consideration of the sum of three thousand five hundred dollars to me in hand paid by Alfred J. Shelby, of the county of Jasper and Republic aforesaid, the receipt of which is hereby acknowledged, bargain, sell, transfer and convey unto the said Shelby, his heirs and assigns, all my real estate property in the city of San Antonio and county of Bexar (to wit), one house and lot on the San Antonio river, formerly used by me as a store, and fronting the street; one large lot containing about four acres in the bend of the river above the bridge, and fronting John McMullen's; also, one lot on the opposite side of the river fronting the four acre lot; also, two others, small lots; also, one labor of land containing one hundred and seventy-seven acres, north of the town, joining the little spring, with water privileges; also, one labor of land leading to the mission east side of the river, and also, one labor of land at the mission Espada, west side of the river, all of which land I hereby sell, transfer, and convey unto said Alfred J. Selby, his heirs and assigns forever.

And I do hereby warrant and forever defend the same from the claims of all persons whatsoever. In testimony of which I have hereunto set my hand and seal this tenth day of October, A. D. 1838.

GEORGE ANTO. NIXON. [SEAL.]

Witness, K. L. ANDERSON,
A. G. KELLOGG.

Republic of Texas, County of San Augustine.

Personally appeared before me, at my office, George A. Nixon, whom I know, and who acknowledged that he signed, sealed and delivered the foregoing instruments of writing for the uses and purposes therein contained.

Given under my hand and seal of office on this, the 29th day of October, A. D. 1838. E. P. LEGRAND, C. J. C. C.
[SEAL.] and Ex-officio Notary Public.

I certify that the foregoing deed was filed for record in my office this, the 7th day of December, A. D. 1846, at 10 o'clock in the forenoon. THOS. HO'S ADDICKS, Cl'k County Court.
By BENJAMIN E. EDWARDS, Deputy.

The State of Texas, County of Bexar.

I, Sam. S. Smith, Clerk of the County Court of said county, do

hereby certify that the foregoing transcript is a true and correct copy from the records of deeds, &c., book D, No. 2, p. No. 169, of said County Court.

In testimony whereof I have hereunto signed my name and affixed the seal of the County Court of said county, at office in San Antonio, this 22d day of June, A. D. 1858.

[SEAL.] SAM. S. SMITH, Cl'k C. C. B. Co.

(Affidavit of P. A. Duffeild.)

The State of Texas, County of Bexar.

Be it remembered, that on this 23d day of June, A. D. 1858, before me, G. H. Nelson, a notary public, duly commissioned and sworn, personally appeared Priscilla A. Duffeild, to me personally known, and being by me duly sworn upon the holy Evangelists, deposes and says, that the original instrument of writing, purporting to be a deed of conveyance from George Anto. Nixon to Alfred J. Shelby, of which the foregoing transcript purports to be a certified copy, is, as she verily believes, forged. Furthermore, that she does not believe that George Antonio Nixon ever signed and sealed the original deed, of which the foregoing transcript purports to be a copy, nor authorized any one to sign the same for him; and she believes that the said original instrument in writing was not the deed of George Antonio Nixon, but on the contrary that the same was and is a forgery. PRISCILLA A. DUFFEILD.

Sworn to and subscribed before me the day and year above given. In testimony whereof I have hereunto subscribed my name, and affixed my seal of office. G. H. NELSON,

[SEAL.] Notary Public B. C.

Endorsed: Filed June 18, 1860. M. HOPKINS, Clerk.

And the defendants at the same time, without having filed the deed or copy, or given notice of either to plff.'s counsel, offered to read in evidence the following certified copy of said deed and certified copy of its authentication:—

(Clerk's Note.)

(See the copy of deed and copy of authentication which, with the certificate of registration, predicates the foregoing affidavit, and is verbatim the same as the copy of deed, copy of authentication, and copy of certificate of registration introduced and offered by the defendants), p. 54, 55, 56. To the introduction of which certified copy of said deed and copy of purported authentication the plff. objected at the time, as follows: 1st, As to the introduction of the certified copy of the deed, because there had been no sufficient predicate laid for its introduction (see former bill of exceptions as to objections to the predicate), and because the same had not been filed three days and notice given to the opposite party, as required by the statutes of the State of Texas (Old. and N. Dig. of Texas Laws,

Art. 469, p. 124 and 125), and because the loss and genuineness of the original was not proved, nor its execution, it being attacked as a forgery. And 2d, The plaintiff objected to the introduction of the certificate of acknowledgment above set forth, because it only purported to be a copy of a copy of the notarial act of Legrand's, without showing that they could not procure the original official minute and record of said acknowledgment; because the deed not being filed in accordance with the statutes of the State, and attacked by affidavit as a forgery, the acknowledgment was of no weight as evidence; because the acknowledgment was merely ex parte, and was of no force except to admit the deed to record; because the same was irrelevant and calculated to confuse the minds of the jury, and mislead them; all of which objections, both to the introduction of the said certified copy of the purported deed and acknowledgment, the court overruled, and the plff. at the time and before the jury retired, excepted, and in the further progress of the same cause the court, of its own motion, charged the jury as to the legal effects of said copy and acknowledgment, as follows:—

"If the jury should be satisfied from the proof before them, that Nixon executed and delivered the deed in question, as a necessary consequence the plaintiff cannot recover in this action. (To enable the jury to arrive at a correct conclusion upon this subject, they will look to all the facts and circumstances bearing upon it, and in evidence before them, and among other things to the recorded copy of the deed and certificate thereunto annexed, taken from the records of Bexar County; and in connection with this, I have to instruct the jury, that the acts of a notary public, done in the proper exercise of his powers and duties, are *prima facie* evidence of the facts or statements certified by him. His certificates to public instruments, when such certificates are not attacked for fraud or want of power in the officer, are entitled to faith, and this rule the jury will apply, as well to the notarial act of Le Grand, as to that of any other notary or officer whose certificates may be in evidence before them."

And also the court, in the same connection, at the instance of the deft's, gave the following instruction, to wit:—

"4th. The certificate of acknowledgment is *prima facie* proof that Nixon signed, sealed and delivered the deed as therein stated; and such evidence can only be rebutted by legal proof which satisfies the jury that the facts stated were not true. But such fraud must be proven, not presumed."

And in the same connection, the court also gave another instruction in reference to such secondary evidence, which has been set out in a former bill of exception, and to which reference is here made; to all of which rulings, charges and instructions the plff at the time and before the jury retired objected, and now here tenders this her sixth bill of exceptions, and asked that the same may be signed,

sealed, enrolled, and made a part of the record in the cause, which is accordingly done. THO. H. DUVAL, [SEAL.]
U. S. District Judge, presiding.

(Plff's 7th Bill of Exc'ns.)

P. A. DUFFEILD vs. F. GUILBEAU et als. } In U. S. Dist. Ct. at Austin, June Term, 1860.

Be it remembered, that on the trial of the above entitled cause, after the court had permitted the copy of the purported deed from G. A. Nixon to A. J. Shelby (heretofore set out in other bills of exceptions in the case), and the certified copy of the acknowledgment thereon, taken before E. O. Le Grand, Chief Justice and ex-officio Notary Public, which acknowledgment is set out fully in other bills of exception in this case, and which, to prevent repetition, is here referred to, to be read to the jury, the pl'ff offered R. M. Egin, Chief Clerk of the General Land Office for the State of Texas, and E. H. Cave, Secretary of State, for the purpose of showing, that at and about the date of the purported acknowledgment in question, that the said Le Grand, both before and after that date, had placed his official seal to and taken acknowledgments of other transfers to land that were forgeries; and that he had signed, in his official capacity, about the same date, fraudulent land certificates, issued to fictitious persons; and also to prove that the said Le Grand was a man of bad character in the neighborhood in which he lived, and was implicated in other transactions officially, in which false certificates of acknowledgment had been given by Le Grand; which evidence the court excluded, on the objection of the def'ts, as being irrelevant; and therefore at the time, and before the jury retired, the pl'ff in open court excepted to the ruling of the court in excluding said testimony, and now tenders this bill of exceptions; and furthermore, in the progress of said cause, the court, at the instance of the def't, charged the jury as follows, with reference to the character of said Le Grand.

"5th. The character of Legrand, the notary, is not before you, and nothing can be inferred from that."

To which charge the pl'ff in open court at the time excepted, as being illegal and irrelevant, and calculated to mislead the jury; which exception the court overruled, and thereupon the pl'ff tendered this her seventh bill of exceptions, and asked that the same may be signed, sealed, enrolled, and made part of the record in this cause, which is accordingly done.

THO. H. DUVAL, [SEAL.]
U. S. District Judge.

(Pl'ff's 8th Bill of Exceptions.)

P. A. DUFFEILD
vs.
FRANCIS GILBEAU et al. } No. 184.

In United States Dist. Court for Western District of the State of Texas, at Austin, June term, 1860.

Be it remembered that on the trial of the above entitled and numbered case, the defendants in defence of the plaintiff's demand (having proven that pl'ff had, prior to her removal to the State of Mississippi in 1851 or 1852, lived in San Augustine County and in Nacadoches County, Texas, and had attorneys residing in said counties, and also in Bexar County, in said last-named State) for pay for the use and occupation of the land and premises in controversy, since the commencement of this suit, and to show that they, defendants, were not liable to pay rent for the use and occupation of said land and tenements, offered to read in evidence to the jury the following certificate from the Comptroller of the State, viz:—

(Certificate from Comptroller's Office.)

"Comptroller's Office, Austin, Texas, June 16th, 1860.

"I certify that no evidence can be found from the record assessment rolls of Bexar, Nacadoches, and San Augustine counties (from 1846 to 1859, inclusive) on file in this office, that either Mrs. Priscilla Ann Duffeild, or any agent for her, rendered for taxation any city property situated in San Antonio.

"In testimony whereof, I hereto set my hand and seal of
[SEAL.] office, date as above written.

"CLEMENT R. JOHNS, Comptroller."

To reading of which certificate in evidence the plaintiff objected, because the Comptroller of the State had no power to give such a certificate; that the same was without authority of law and not admissible as evidence; that the statutes of the Republic, now State of Texas, under which said certificate was sought to be introduced, is in contravention of and violence of the Constitution of the State of Texas; and because said certificate is not such as required by said statute, it not showing that plaintiff had not paid the taxes on said land in some other county or place in the State. All which objections were by the court overruled, and said defendants permitted to read said certificate in evidence to the jury; to which ruling of the court the plaintiff at the time excepted. And defendants further in defence of plaintiff's demand for use and occupation of said land and tenements, and to show that they were not liable to pay rent for said property, to show that they, def'ts, respectively had paid the taxes due on the several portions of said land claimed by them, since

1847 up to the present time, offered to read in evidence to the jury the following certificate from the Comptroller of the State, viz:—

"Extract from the Assessment Rolls of Bexar County for the years 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, 1858, and 1859.

For 1846 and 1847, both years included in rolls.

Town Lots.

By whom rendered.	No.	Where situated.	Value.
Callahan B.	6	San Antonio	747
Guilbeau F.	3	do.	6,000
For 1847.			
James John	1	do.	200
For 1848.			
Elliott Eleanor	1	San Antonio	1,000
do. adm. Wm. Elliott	5	do.	4,550
Callaghan Bryan	4	do.	3,900
Guilbeau F.	8	do.	10,125
For 1849.			
	Lot. Blk.		
Callaghan Bryan	1	San Antonio	3,000
do.	4	do.	450
Elliot Eleanor Mrs.	2	do.	2,200
Guilbeau Francis	13	do.	12,750
James John	8	do.	3,000
For 1850.			
Callaghan Bryan	6	San Antonio	5,100
Guilbeau Francis	18	do.	12,750
James John	8	do.	3,000
For 1851.			
Callaghan B.	8	San Antonio	9,950
Elliot Eleanor	2	do.	5,150
James John	2	do.	3,150
Guilbeau Francis	54	do.	22,161

Town Lots.

By whom rendered.	Lot. Blk.	Where situated.	Value.
For 1852.			
Callaghan B.	14	San Antonio	13,520
James John	1	do.	3,000
Guilbeau Francis	55	do.	23,000
For 1853.			
Callaghan Bryan	14	San Antonio	13,550
Guilbeau Francois	56	do.	2,400
James John	2	do.	3,040

For 1854.

Callaghan B.	14	San Antonio	16,000
Elliot Mrs. E.	2	do.	6,000
do. adm'x W. Elliot, dec'd	5	do.	15,000
Guilbeau F.	58	do.	27,000
James Jno.	2	do.	3,500

For 1855.

Callaghan B., "deceased"	17	San Antonio	16,000
Elliot Mrs., adm'x Wm. Elliot	5	do.	15,000
Guilbeau Francois	58	do.	35,000
James John	2	do.	7,000

For 1856.

Elliot Mrs. E.	2	San Antonio	8,000
do. adm'x W. Elliot, dec'd	5	do.	18,000
Guilbeau Francois	52	do.	35,000
Gallagher Peter, guard. heirs Callaghan	5	do.	2,400
James John	29	do.	4,700
Wuest Gustavus	1	do.	3,500

For 1857.

Elliot Elleanor Mrs.	6	San Antonio	14,600
do. guard. W. H. Elliot	2	do.	3,500
do. " Jno. Elliot	3	do.	3,300
Guilbeau Francois	52	do.	35,000
do. ag't Mrs. Callaghan	5	do.	2,400
do. guard'n heirs B. Callaghan	56	do.	8,400
James John	29	do.	4,700
Michaud F. F.	1	do.	12,000

Town Lots.

By whom rendered.	Lot.	Blk.	Where situated.	Value.
For 1858.				
Elliot Mrs. E.	6		San Antonio	14,000
do. guard'n W. H. Elliot	8		do.	3,500
do. " John Elliot	3		do.	3,300
Gallagher Peter, g'd heirs B. Callaghan	56		do.	8,400
Guilbeau Francois	52		do.	35,000
do. ag't Mrs. Callaghan	5		do.	2,400
James John	37		do.	4,500
Michaud F. F.	2		do.	1,200
West Gustavus	1		do.	3,400
For 1859.				
Elliot Mrs. E.	6		San Antonio	14,000
do. guard'n W. H. Elliot	2		do.	3,500
do. " John Elliot	3		do.	3,300

Gallagher P., agent heirs B. Callaghan	48	do.	12,000
Guilbeau F.	65	do.	38,224
James John	36	do.	6,000
"Marchand" F. F.	1	do.	1,000
West Gustavus	1	do.	3,400

"COMPTROLLER'S OFFICE,
"AUSTIN, June 16, 1860.

"I certify that the above and foregoing is a correct transcript of city property in San Antonio, as taken from the Assessment Rolls of Bexar county, on file in this office, rendered for taxation by the above-named parties, and for the years designated; and I further certify that no evidence appears on record in this office, that said parties were defaulters in the payment of taxes due thereon.

"Given under my hand and official seal, the date above written.

[SEAL.] "CLEMENT R. JOHNS, Compt."

To the reading of which certificate, the plaintiff at the time objected, because the comptroller had no power to give said certificate; because said certificate does not show that defendants, or either of them, had paid the taxes on the property here in suit, or any part of it. That said certificate is not admissible as evidence; that the same is not made out in the form, nor does it certify to the fact, as authorized by the statute under which it is sought to be introduced; and because said statute of the Republic—now State of Texas—is in contravention of and violation of the Constitution of the State of Texas; which objections were by the court overruled, and said defendants allowed to read said certificate in evidence; to which ruling of the Court, the plaintiff at the time excepted; and, time being allowed to prepare the exceptions, plaintiff here tenders this her eighth bill of exceptions to the said several rulings of the court, allowing both said certificates to be read in evidence, and asks that the same may be signed, sealed, and enrolled as a part of the record in this case, which is accordingly done.

THOS. H. DUVAL, [SEAL.]
U. S. Dist. Judge.

(Defendants' Bill of Exceptions.)

PRISCILLA ANN DUFFEILD YOUNGE
vs.
FRANCOIS GUILBEAU and Others.

Be it remembered, that in the progress of this suit, it was proved, that when the defendants purchased from Quinn, the land was vacant and without improvements; and that all the improvements made—which were valuable—the defendants made before the commencement of the suit, except the store upon the Callaghan lot, which made after the commencement of the suit, and lager beer distillery, which was also made on the Elliot lot after the commencement of the suit;

whereupon the plaintiff commenced examining the witnesses, as to the value of the rents, use, and occupation of the respective lots with the improvements; whereupon the defendants objected to any proof of any value of the use and occupation of the houses made by themselves, and contended, that, under the statute, the plaintiff could only claim, "as against settlers in good faith, the rent of the land," in the state in which it was when the defendants entered upon it. But the court overruled the objection, and decided the rule to be, that the plaintiff could only recover rents, as against tenants in good faith, from the commencement of the suit; that the plaintiff could recover for the use and occupation of the houses built by the defendants, as well as of the land; and, as to the effect of the commencement of a suit upon the question of good faith as to improvements made after the commencement of the suit, the court said, it would charge the jury, and did charge the jury, with reference thereto, as hereafter set out in this bill; to which charge the def't at the time excepted; whereupon the plaintiff proved the following diagram of division, to wit:—

(For plat, see original, page 70.)

And the plaintiff proved that the Presbyterian church has been worth $20 per month; that the house is an adobe of no permanent value: the lot without the house worth $3,000. That Guilbeau's house is a good residence in good repair, worth from $6,000 to $8,000; the rents worth from $60 to $75 per month; lot, without improvements, worth $3,000.

That Callaghan's store was built after the commencement of the suit; there was a one-story dwelling, with four rooms, before the commencement of the suit. The storehouse was proven to be worth from six to ten thousand dollars, and the rent worth from $1,000 to $1,200 per annum; the value of the other houses varied from $600 to $2,500, and the rents from $25 to $40 per month; the lot worth $3,000, without improvement.

John James' residence was proven to be worth from six to ten thousand dollars, and the rent to be worth from $60 to $75 per month; the lot being the widest, worth $4,000, without improvements.

The Wuest houses were proven to be worth from three to four thousand dollars (defendants' witnesses said from six to eight thousand dollars), and the whole rents to be $60 per month; value of naked lot $2,000.

Michaud's improvements were proven to range from very little value to $2,500 or $4,000, and the rents from $15 to $25 per month; the improvements not of a permanent character; the lager beer distillery built after the commencement of the suit.

The Elliot improvements were proven to be worth from $500 to $3,000; rent worth $20 per month. The plaintiff's witnesses thought these improvements were of little permanent value. The

plaintiff proved no payment of taxes; the defendants proved the following certificates from the Comptroller's office, to the introduction of which the plaintiff objected.

(*Note. For the certificates referred to, see Plaintiff's Eighth Bill of Exceptions—Clerk.) 64, 65, 66, 67, 68, Record pages.

Upon the subject of improvements, the defendants asked the following instruction, to wit:—

"8." "If you find that the deed is not a forgery, then you will find for the defendants. But if you find that the deed is a forgery, then you will consider the question of improvements upon the following principles:—

1. You will determine, from the evidence, whether the defendants went into possession, and made improvements in good faith or not; that is, whether they held honestly, believing that they had the right to hold.

2. And if so, they are entitled to the present value of all permanent improvements made before the commencement of the suit.

3. The commencement of the suit did not necessarily destroy good faith, but only put the defendants upon strict enquiry; and unless they had good reason to believe that the plaintiffs had a better title than anybody else, the defendant, Callaghan, is entitled to recover the value of his store, built after the commencement of this suit.

4. The plaintiff is entitled to no rent after the commencement of the suit.

5. And only to ground rent, but not to rent for the use of the houses built by defendants.

6. Having determined the value of the improvements and rents by this rule, then you will find the present value of the lots without the improvements:" which several instructions the court declined to give. To the refusal to give these instructions the defendants excepted before the retirement of the jury from the bar, and time was given to prepare the exceptions. And now, as, if the case should be reversed, the question of improvements would again come up for reconsideration, and therefore the Supreme Court might wish to pass upon it, the court seals this bill of exceptions and also refers to the general charge of the court, to which the defendants also except. (The portion of the charge herein excepted to is in words to wit):—

"But if the jury should believe the deed to be a forgery, and find for the plaintiff on the question of title, then the next thing to be determined by them, will be whether the defendants are possessors in *good faith* of the land claimed by them, for, if they be so, and have made permanent and valuable improvements thereon, then they will be entitled, under the statute, to recover of the plaintiff the value of such improvements, as shown by the evidence. The question then arises, who is to be regarded as a possessor of land in good faith? This, in my judgment, is a mixed question of law and fact. The jury are the exclusive judges of the facts of a case, as developed by the evidence before them, and it is the legitimate province and duty

of the court to say what the law is upon these facts. With this explanation I instruct the jury that to constitute a party a possessor in good faith, he must have reason to believe that his possession is just and rightful. It must be such reason as would induce a man of ordinary intelligence, and with the use of a proper degree of diligence and inquiry, under all circumstances of the case, to arrive at the conclusion that his possession was rightful. A mere irrational idea that he is a possessor in good faith, unsupported by facts and circumstances properly conducing to such belief is not, of itself, sufficient, and cannot avail for such a purpose. While, therefore, the question of good faith must depend, in a great measure, upon the interest and honest belief of the party, and be a question of fact to be determined by the jury from all the evidence before them, it may at the same time be to some extent, a question of law also. If for instance a party entered upon land under one who had no power to authorize such entry, and the want of such power was known, or might have been known by the use of ordinary inquiry, the law itself would not regard such possession as being one in good faith. So likewise, the law determines that a possession in good faith ceases when the possessor has actual notice of an adverse title, by suit brought against him, so far as to exclude any right for pay for improvements made after that time."

And now, to serve the said exceptions taken before the jury retired—so far as the charge is contrary to the eight instructions asked by the defendants and refused as above set forth, the court seals this bill and makes it a part of the record.

THO. H. DUVAL, [SEAL.]
U. S. Dist. Judge.

(Of Petition of Writ of Error.)

And afterwards, to wit, on the 2d day of July, A. D. 1860, the plaintiffs, Priscilla Ann Duffeild Youngue and her husband James Youngue, filed in the clerk's office of said court their petition for writ of error which is in words to wit:—

United States of America, Western District of Texas, to wit:—

In the clerk's office of the United States District Court for the Western District of Texas, at Austin, June term, 1860.

PRISCILLA ANN DUFFEILD, now PRISCILLA ANN YOUNGUE, joined by her husband JAMES YOUNGUE, plffs.

vs.

FRANCIS GUILBEAU, JOHN JAMES, GUSTAVUS WUEST, CONCEPTION R. CALLAHAN, F. F. MICHAUD, ELEANOR ELLIOTT, WILLIAM ELLIOTT, JOHN ELLIOTT, and ASA MITCHELL, FRANKLIN L. PASCHAL, JOHN S. MCLELLAN, and SAMUEL G. NEWTON, Trustees of the Presbyterian Church, defendants in said cause.

And now comes the plaintiff, Priscilla Ann Duffeild, now Priscilla

Ann Youngue, joined by her husband James Youngue, and says, that at the June Term, A. D. 1860, and on the 22d day of June, 1860, that a final judgment was rendered in the above styled cause, in favor of the above named defendants, and against the said plaintiff therein; and that in the record, proceedings, and judgment herein manifest error hath intervened, to the great injury of the said plaintiff, all of which the said plaintiffs are ready to verify. Wherefore the said plaintiffs pray that a writ of error issue returnable to the Supreme Court of the United States, at Washington City, at the next term thereof, together with citation and supersedeas, as required by law, so that the errors in said record, proceedings, and judgment may be examined in said supreme court, and the judgment aforesaid reversed, and what is right in the premises be done by said court, &c. &c.

MOORE, HENSON, & HANCOCK & WEST,
Att'ys for Plffs.

Endorsed: Filed July 2, 1860. M. HOPKINS, Clerk.

(Bond for Writ of Error.)

And afterwards, to wit, on the second day of July, A. D. 1860, came the plaintiffs, now plaintiffs in error, and filed in the clerk's office of the District Court of the United States, at Austin, in the Western District of Texas, bond for writ of error, duly approved by the Hon. Tho's H. Duval, Judge of said court. Writ of error allowed by the said judge, with copy in pursuance of the statute, and citation in error, and copy of the same; and the same having been inspected and sealed, are now made a part of the record.

The bond for writ of error being in words to wit:—

(Bond for Writ of Error.)

In the United States District Court for the Western District of Texas, sitting at Austin.

P. A. Duffeild *vs.* F. Guilbeau et al. In Error.

Know all men by these presents, that we, Priscilla Ann Youngue, formerly Priscilla Ann Duffeild, joined by her husband James Youngue, as principals, and John Hancock and James T. McLaurin as securities, are held and firmly bound unto Francis Guilbeau, John James, Gustavus Wuest, Conception R. Callaghan, widow of Bryan Callaghan, deceased, F. F. Michaud, Eleanor Elliott, William Elliott, John Elliott, and Asa Mitchell, Franklin L. Paschal, John S. McLellan, and Samuel G. Newton, trustees of the Presbyterian Church, defendants in the above styled cause, in the sum of three hundred dollars, to be paid to the said defendants above named, their executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, using scrolls for seals, and

dated this day of A. D. 1860. The condition of the above obligation is such, that whereas the above named Priscilla Ann Duffeild, now Priscilla Ann Youngue, joined by her husband James Youngue, hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above named suit, wherein the said Priscilla Ann, joined by her said husband James Youngue, was plaintiff, and the before named obligees herein stated were defendants, which judgment was rendered in the United States District Court for the Western District of Texas, at Austin, on 22d day of June, A. D. 1860, against the said Priscilla Ann and her husband James Youngue, and in favor of the obligees above named, who were defendants therein: Now therefore, if the above named Priscilla Ann, joined by her husband the said James Youngue, shall prosecute their said writ of error to effect, and answer all the costs and damages if they fail to make good their plea, then this obligation to be void; and otherwise to remain in full force and virtue. Signed and sealed this 2d day of July, A. D. 1860.

PRISCILLA ANN YOUNGUE, [SEAL.]
By her Att'ys, HANCOCK & WEST.
JAMES YOUNGUE, [SEAL.]
By his Att'ys, HANCOCK & WEST.
J. T. McLAURIN. [SEAL.]

Approved this 2d day of July, A. D. 1860.
T. H. DUVAL, U. S. Dist. Judge.

And the aforesaid writ of error is in words to wit:—

Endorsed: P. A. Duffield and James Youngue *vs.* F. Guilbeau et als. No. 184. Writ of error. Filed July 2d, 1860.
M. HOPKINS, Clerk.

(Writ of Error).

United States of America, *ss.*

The President of the United States, to the honorable the Judge of the District Court of the United States for the Western District of the State of Texas, at Austin, greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea, which is in the said District Court before you, between Priscilla Ann Duffeild, now Priscilla Ann Youngue, joined by her husband, James Youngue, as plaintiffs, and Francis Guilbeau, John James, Gustavus Wuest, Conception B. Callaghan, widow of Bryan Callaghan, deceased, F. F. Michaud, Eleanor Elliott, William Elliott, John Elliott and Asa Mitchell, Franklin L. Paschal, John S. McLellan and Samuel G. Newton, Trustees of the Presbyterian Church—all above named last being defendants—a manifest error hath happened, to the great damage of the said Priscilla, above named as plaintiff, as by her complaint appears, we

being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on or before the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the said Supreme Court, this second day of July, in the year of our Lord one thousand eight hundred and sixty.

[SEAL.]

Allowed by T. H. DUVAL,
U. S. Dist. Judge.

In teste whereof, I have hereunto set my hand and the impress of the seal of court at Austin, this second day of July, A. D. 1860.

MATTHEW HOPKINS, Clerk.

(Of Copy of Writ of Error.)

The copy of writ of error filed therewith, and which verbatim is copy of the foregoing, in endorsed in words to wit. No. 184. In U. S. District Court West'n District of Texas, at Austin, holding sessions.

Priscilla Ann Duffeild Youngue and James Youngue, pl'ffs in error, *vs.* Francis Guilbeau et al., defendants in error. Copy of writ of error lodged in the Clerk's Office of the United States District Court for the Western District of Texas, at Austin, in pursuance of the statutes of the United States in such case made and provided. Filed July 2d, 1860.

MATTHEW HOPKINS, Clerk.

(Citation in Error and of Copy.)

The citation in error and copy of citation in error is in words to wit:—

The United States of America:

The President of the United States to Francois Gilbeau, John James, Gustavus Wuest, Conception R. Callaghan, widow of Bryan Callaghan, dec'd, F. F. Michaud, Eleanor Elliot, William Elliot, John Elliot, and the Trustees of the Presbyterian Church, to wit, Asa Mitchell, Franklin L. Paschal, John S. McCelland, and Samuel G. Newton—all citizens of the State of Texas, and residents of the county of Bexar, or to their attorneys of record, J. A. and George

Paschal: You are hereby cited and admonished to appear at the next term of the Supreme Court of the United States, to be held at the City of Washington, on the first Monday of December next, to show cause, if any there be, why the judgment rendered in your favor by the District Court of the United States for the Western District of Texas, holding its sessions at Austin, in said District, in a certain cause or suit lately depending between Priscilla Ann Duffeild Youngue and her husband, James Youngue, plaintiffs, and you as defendants, and numbered No. 184 on the law side of the court at Austin, in which judgments was rendered in your favor, should not be reversed, and speedy justice done to the parties in that behalf, in pursuance of a writ of error obtained by the said Priscilla Ann Duffeild Youngue, and her husband James Youngue, according to their petition, filed in the District Court of the United States for the Western District of Texas, at Austin.

Witness the Honorable Thomas H. Duval, Judge of the District Court of the United States for the Western District of Texas, at Austin, this second day of July, in the year of our Lord one thousand eight hundred and sixty.

[SEAL.] THOS. H. DUVAL,
U. S. District Judge.

To certify the aforesaid I have hereunto set my hand, and to the signature of the judge impressed the seal of the court, this second day of July, A. D. 1860.

MATTHEW HOPKINS, Clerk.

(*Service.*)

Service was endorsed by the attorneys of record, in words to wit:

"We acknowledge due service of the within citation upon us this 3d day of July, A. D. 1860.

J. A. &. GEO. W. PASCHAL, for Defendants.

Attorneys of defendants in error as set forth in this citation.

Witness:
MATTHEW HOPKINS, Clerk.

(Assignment of Errors.)

And thereafter plaintiffs in error, by Hancock and West, of counsel and attorneys for the plaintiffs in error, lodged in the clerk's office their assignment of errors, which is endorsed No. 184, P. A. Duffeild *vs.* F. Guilbeau et al., *assignment of errors*, and which is in words to wit:—

(Assignment of Errors.)

P. A. DUFFEILD
vs.
F. GUILBEAU et al. } No. 184. In U. S. District Court.

And now the plaintiff in error in the above cause comes and says

that in the record, proceedings, and judgment in said cause rendered, the following errors have intervened, as will be apparent from an inspection of the record and proceedings herein, and which errors are here assigned:—

1. Because the court erred in allowing the evidence of Wallace to be read to the jury, the same being illegal and incompetent for reasons set out in said record in bill of exceptions No. 1. (Record, page 19, 20, 21.)

Second. Because the court erred in giving the sixth instruction asked by the defendants as to the effect of the evidence of Wallace, as set out in this record in bill of exceptions No. 1. (Record, page 22.)

Third. Because the court erred in refusing fourth instruction asked by the plaintiff, as to the legal effect of the evidence of Wallace. (See 1st bill of exceptions in this record, p. 21.)

Fourth. Because the court erred in its ruling as to the legal sufficiency of the predicate laid by the defendants for the introduction of secondary evidence as to the existence, loss, and execution of the deed from Nixon to Shelby, as set out in this record in plaintiff's bill of exceptions No. 2. (Record, p. 23 to 33.)

Fifth. The court erred in its main charge to the jury, as to the sufficiency of said predicate. (See charge as set out in bill of exceptions No. 2, in this record, page 33.)

Sixth. The court erred in giving instruction second, asked by defendants as to the sufficiency of said predicate. (See bill of exceptions No. 2, in this record, p. 33.)

Seventh. The court erred in its main charge to the jury on the subject of the delivery of the deed from Nixon to Shelby, as set out in this record in plaintiff's bill of exceptions No. 3. (Record, page 42.)

Eighth. Because the court erred in giving the seventh instruction asked by the defendant, as to the delivery of said deed. (See bill of exceptions No. 3, in this record, p. 43.)

Ninth. Because the court erred in its main charge to the jury in relation to the effect of the affidavit of forgery of said deed filed by plaintiff. (See bill of exceptions No. 3, in this record, p. 44.)

Tenth. The court erred in giving third instruction of defendants as to said affidavit. (See bill of exceptions No. 3, Record, p. 44.)

Eleventh. Because the erred in refusing the second instruction asked by plaintiffs to the effect of said affidavit. (See bill of exceptions No. 3, in this record, p. 44.)

Twelfth. Because the court erred in permitting the deed from Wood, guardian, to McLellan, to be read to the jury. (See bill of exceptions No. 4, in this record, at p. 45 to 50.)

Thirteenth. Because the court erred in its main charge to the jury, as to the effect of *de bene esse* depositions, and in refusing the instruction on the same subject, asked by defts. (See Bill of Exceptions No. 5, in this Record, p. 53.)

Fourteenth. Because the court, in permitting the certified copy of

the deed from Nixon to Shelby to be read to the jury, and the purported authentication of the same, and also erred in its main charge and in giving 4th instructions asked by deft., both relating to the effect of said authentication and copy, all of which will be seen by reference to Bill of Exceptions No. 6, in this Record, p. 54 to 60.

Fifteenth. Because the court erred in excluding the evidence of Elgin and Cave as to the acts of Legrand and his character, and after excluding, then erred in giving 5th instruction asked by defendant as to Legrand's character, as will be seen by reference to 7th Bill of Exceptions in this Record, p. 61 to 62.

Sixteenth. Because the court erred in permitting the two certificates offered by defendants on the subject of taxes to be read to the jury, which will be more fully seen in plff.'s 8th Bill of Exceptions, in this Record, p. 63 to 68.

For which errors the plaintiffs pray that said judgment may be reversed.

P. A. DUFFEILD YOUNGUE
and JAMES YOUNGUE, Plaintiffs,
By Attys. HANCOCK & WEST.

And afterwards came the defendants by their attorneys, J. A. and George W. Paschal, and filed their joinder in errors, which is endorsed No. 184.

PRISCILLA ANN DUFFEILD
vs.
F. GUILBEAU et al.
} Joinder in Errors. Filed Oct. 19, 1860.

M. HOPKINS, Clerk.

And is in words to wit:—

(Joinder in Errors.)

PRISCILLA ANN DUFFEILD
vs.
FRANCIS GUILBEAU et al.
} No. 184.

And now comes the defendants, and say that there is no error in the record, and pray that the judgment be affirmed with costs.

GEO. W. PASCHAL, for Defts.

I, Matthew Hopkins, Clerk of the District Court of the United States for the Western District of Texas, at Austin, certify the foregoing eighty-six pages, numbered from one to eighty-six inclusive, to be a full, true, and correct copy of the record and all the proceedings had in the case of Priscilla Ann Duffeild, now Youngue, et al. *vs.* Francis Guilbeau et al., number one hundred and eighty-four on the Law Docket of said court; in testimony of which I hereunto set my hand and the impress of the seal of said court at Austin, this seventh day of November, in the year of our Lord one thousand eight hundred and sixty.

[SEAL.] MATTHEW HOPKINS, Clerk.

Filed 26th November, 1860.

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Supreme Court of the United States.

PRISCILLA ANN-NIXON-DUFFIELD YOUNGE

vs.

No 40

FRANCIS GUILBEAU ET AL.

Brief for Defendants.

GEO. W. PASCHAL.

Joseph L. Pearson, printer, 511 Ninth street.

Supreme Court of the United States.

PRISCILLA ANN-NIXON-DUFFIELD YOUNGE

vs.

FRANCIS GUILBEAU ET AL.

The history, as presented by the record, is, that the plaintiff is the daughter of George Antonio Nixon, of Nacogdochez, who, in his lifetime, owned the lot of ground in controversy, then situated in San Antonio; that Nixon, during his life, conveyed the property to his brother-in-law, Alfred J. Shelby, by deed, duly acknowledged before a notary on the 29th October, 1838, under which deed the defendants derived their title. This deed was registered in Bexar county on the 29th of October, 1846. Nixon died in April, 1843, leaving the plaintiff, (who has been twice married,) his only heir. She commenced her suit in 1856, and claims the inheritance, notwithstanding the deed of her father.

There is no general statement of facts in the record; and there being eight detached bills of exceptions, it is difficult to understand the rulings or the grounds of the plaintiff's complaint. The trial was commenced on the 14th, and closed in a verdict for the defendants on the 22d of June, 1860, (pp. 8 to 13.)

The plaintiff sends up eight bills of exception and sixteen assignments of error. But neither one nor all pretend to give the whole facts, if, indeed, they disclose the facts upon any one ruling.

Before noticing the bills of exception separately it is proper to remark that, contrary to the 38th rule of this court, the written charge of the court, *minus* the several detached propositions embodied in the several bills of exception, is given, (pp. 10 to 12.)

This is, of course, not before the court for review. There is also a note by the clerk, on page 12—"And now the plaintiff and defendants, having noted their exceptions, and time being given them to prepare their bills of exceptions, the jury retired," &c. Then follow the verdict and judgment; and another similar remark (p. 13) precedes the eight bills of exceptions, the two first of which are said to have been filed on the 29th of June, seven days after the judgment. There is no note of filing the others. There is no statement that the court was still in session. After the first objection the remark, "all of which objections were by the court overruled, and the plaintiff, before the jury retired, excepted," (p. 14;) and, in the second, occurs the remark, "to all of which rulings and instructions, refused and given as above set forth, the plaintiff, at the time and before the jury retired, excepted, for the reasons set forth, and now tenders this her first bill of exceptions, and asks that the same may be signed, sealed, enrolled, and made a part of the record, which is accordingly done," (p. 15.) The second bill, after reciting certain affidavits, with a similar recital, says, "and thereupon, at the time, the plaintiff excepted," &c., (p. 21.) The third bill, after reciting sundry evidence and charges, given and refused, says, "to all of which charges and instructions given, the plaintiff, at the time, and before the jury retired, excepted, &c.; all of which objections, however, the court overruled, and the plaintiff now tenders this, her bill of exceptions." Then, after other charges, occurs the same identical remark, (pp. 26, 27.)

The fifth bill, after asking an instruction upon the *weight* of depositions taken *de bene esse*, and obtaining a qualified instruction, contains the same recitation, (p. 32.)

The sixth bill, after stating sundry objections to the admission of the copy of the deed, on which the case turns, says, "the plaintiff, at the time, and before the jury retired, excepted," (p. 35;) then, after reciting the instructions, says, "the plaintiff, at the time, &c., objected," (p. 35.)

The seventh bill of exceptions is to the refusal of the court to allow proof of the bad character of Legrand, the notary. It merely says that "at the time, and before the jury retired, the plaintiff, in open court, excepted to the ruling of the court in excluding said testimony, and she tenders this bill of exceptions," (p. 36.) The exception to the charge is substantially in the same form. The two first bills of exceptions bear the file mark of the 29th June, 1860; the other six bear no evidence of ever having been filed.

1. The statute of Texas requires all papers in a cause to be filed, (Hartly, art. 694;) and no paper is noticed in the Supreme Court unless they have the file mark.—(Love vs. McIntyre, 3 Tex., 13.)

Therefore, only the bills one and two can be considered. And even as to them, and to all, if it be possible to overcome this objection, there is another which is certainly fatal to the whole.

2. And that is, that the record does not show, as the law requires, that the *exceptions* were actually taken at the proper time; that the time was given to prepare the bills *by order of the judge;* and that, being signed after the trial, it was done *nunc pro tunc*, and while the court was in session. The absence of these facts is fatal to the presence of the bills of exceptions, with which the record so frightfully bristles.—(*Ex parte* Martha Bradstreet, 4 Peters, 106; Brown vs. Clarke, 4 How., 15; Walton vs. the United States, 9 Wheat., 651.) These cases are so short and so inflexibly conclusive of the point that I shall refer to them at bar.

And now, although I deem it scarcely possible that I

can be mistaken in the application of such simple principles of practice, I yet feel it due to the counsel, so experienced in the practice of Texas, to advert to the other points which they make in order to show that in no aspect of the case could the judgment be reversed.

The first bill of exceptions is to the evidence of B. Rush Wallace, (p. 13.) But when or at what time the witness was sworn does not appear. Wallace stated the time of the marriage of the plaintiff, the death of Nixon, and the declarations of the plaintiff that her father had conveyed the property to Shelby; that Duffield and Horton had sold it for a price with which she was satisfied. The objection taken was that the evidence was irrelevant and related to other property; that she was a married woman and could not be bound by her admissions; that the evidence was vague, &c. But whether this evidence was offered before or after or in connection with other facts in the record, or which may have been altogether omitted, is not stated.

In the same bill there are exceptions to instructions given and refused about the declarations of Nixon and the plaintiff, which show that this bill is not full as to the evidence.—(Record, pp. 14, 15.) Upon this bill the plaintiff assigns three errors (p. 48) which only the more confuse.

The second bill of exceptions sets out the affidavits of one of the defendants and of their counsel, and a rule upon the counsel of the plaintiff to produce the deed from Nixon to Shelby, and the response of the counsel to the effect that neither they nor their client could account for the original deed, and knew nothing of it except what they derived from the records of Bexar county, (pp. 15 to 20.) The bill then proceeds, that the defendants offered to introduce secondary evidence as to the existence, loss, contents, and execution of said deed, (p. 20,) and that the plaintiff objected, which was overruled, "and secondary evidence was permitted to be intro-

duced." But here is an absence of any statement that the affidavits were the only predicate laid; and there is equal silence as to what secondary evidence was heard. In the same bill is the extract from the charge of the court, which shows that the proof was satisfactory to the judge.—(Record, p. 21.) Against the rulings in this bill the plaintiff levels three assignments of error, (p. 48.)

The introduction to the bill of exceptions, No. 3, shows that the predicate not only embraced all these affidavits, but also the evidence of Wallace and of sundry other witnesses, whose depositions also were read.—(Record, from p. 21.) For what purpose these facts were offered is not stated; and there is no statement as to any ruling upon them except as to the charge of the court.—(Record, p. 26.) It is to be observed that thus far there is no statement that the deed had got to the jury. But that it must have been so is apparent. This silence seems to have been studiously arranged; for we find in another bill, on page 32 to 35, the statement, that after the proof of the predicate, &c., (leaving an unmistakable inference that the deed had already been read,) the plaintiff, on the 18th of the month, which was the fifth day of the trial and the same time *after* the response to the rule to produce the deed, filed her affidavit, made in Bexar county, where the property is situated, two years before, wherein she swears that the original, "as she verily believes, is forged."—(p. 34.) Upon this affidavit the court is asked to look back to other bills of exceptions for "the predicate," without any pretence that all the proof is anywhere stated, but with intrinsic evidence of a want of such proof, and to consider objections to a copy read, which is not in the record, but which the clerk certifies to be identical.—(Record, p. 34.) And here again the charge of the court is connected with his ruling upon the admissibility of the evidence, and against this vague, unnarrated action three errors are assigned.

The fourth bill of exceptions is to the ruling of the

court in refusing to allow evidence to impeach the character of Legrand, the notary before whom the deed was executed; and also to a remark to the jury that the character of Legrand was not before them. Another is devoted to a charge asked upon the weight of the depositions taken *de bene esse*.

The 7th, 8th, and 9th assignments are leveled at the charge about the delivery of the deed: the 10th and 11th at the rulings upon the affidavit. The 14th and 15th assignments are but reiterations of those which had preceded. It will thus be seen that six bills of exception and fourteen assignments of error are aimed at this deed. The only other assignment relates to the effect of the depositions *de bene esse*.

3. The first inquiry for the consideration of this court is, can any question sought to be presented be revised? We think that in the attitude of the record, the question must be answered in the negative. As we understand it, in the absence of a special verdict, finding all the facts proven, or of a bill of exceptions which brings the whole facts upon the record, the correctness of the charge of the court upon the whole, or any part of the evidence, cannot be reviewed; that the writ of error is under the 22d section of the judiciary act, and must be considered according to the rules of the common law; and that no error will be examined unless it is apparent of record, or is made to appear by bill of exceptions, or in some other legal manner.—(Bennett vs. Butterworth, 11 How., 669; Slocum vs. Pomeroy, 6 Cr., 221; Garland vs. Davis, 4 How., 131; Cohen vs. Virginia, 6 Wh., 410; Suydam vs. Williams, 20 How., 433.)

The statute of Texas makes the special instructions asked by either party, and given or refused by the court, a part of the record, and subject to revision by the supreme court of that state "in the same manner as if a regular bill of exceptions had been signed."—(Hartly, Art. 754.) The next section provides for a bill of excep-

tions substantially after the manner of the common law. (Hartly, Art. 755.) It also provides for a statement of facts to be agreed upon between the parties, and certified by the judge when the party has given notice of appeal.—(Id., Art. 788.) The supreme court act provides for the trial of all cases upon this statement of facts, or on a bill of exceptions to the opinion of the judge, or on a special verdict, or on an error of law, either assigned or apparent on the face of the record.—(Hartly, Art. 2,930.) As we understand the rule in Suydam vs. Williams, (20 How., 433,) the first mode above would not be tolerated by this court; the bill of exceptions would be limited to the office of a bill of exceptions at common law; and the facts could only be noticed upon a special verdict, or the more correct practice of a bill of exceptions, which would bring in review specific objections to any part of the evidence and the charge of the court upon the whole facts of the case. Even in Texas, the general charge will not be noticed unless specially excepted to.—Thatcher vs. Mills, 14 Tex., 13; Converse vs. McKee, 14 Tex., 20. And the errors growing out of the general charge, or the special instructions given or declined, will never be revised, unless there be a statement certifying the whole facts of the case.—Ashworth vs. The State, 9 Tex., 490; McMullen vs. Kelso, 4 Tex., 235; Duffield vs. Bodine, 2 Tex., 292; Jones vs. Black, 1 Tex., 527; James vs. Fulcrod, 5 Tex., 512; Linn vs. Montross, 5 Tex., 510; Hall vs. Little, 11 Tex., 411.

In the absence of a statement of facts, the presumptions are all in favor of the verdict.—Phillips vs. Hill, 3 Tex., 397; Porter vs. Cochrane, 1 Tex., 77; St. Clair vs. McGehee, 22 Tex., 6; Milburn vs. Walker, 11 Tex., 330; Robinson vs. Lakey, 19 Tex., 141.

So if the bill of exceptions does not purport to state all the facts.—Trustees vs. Leffler, 23 Ill., 90; Caroline vs. Jefferson, 24 Tex., 229.

The supreme court of Texas, in a well considered case, has said: "There is no statement of facts in the case by which it can be determined whether these charges, as given and as refused, were pertinent, or mere abstractions. (McMullen vs. Kelso, 4 Tex., 237.) Without such statement, it cannot be seen how far the case was affected by excluding the secondary evidence as to the power of attorney, even had there been error in its exclusion.—(Hutchins vs. Wade, 20 Tex., 7.) Parties wishing to have errors of the court revised in giving or refusing charges, and *in admitting or rejecting evidence*, should prepare and send up a statement of facts, as it has been repeatedly decided."—Fulgahm vs. Bendy, 23 Tex., 65.

The rules as to secondary evidence, and the mode of revision, are the long settled law in Texas; and even though it be merely persuasive to this court, it is so in conformity to principle, and to general precedents, as to make it peculiarly applicable to this case. There is not a point presented in the record that is not industriously a mere abstraction. The principle is stated with even more clearness in Hutchins vs. Wade, 20 Tex., 8. "There being no statement of facts in the case, the errors assigned upon the rulings of the court, as to *the admission of testimony*, and as to the interrogatories propounded to defendant, and upon the charges given and charges refused to be given to the jury, cannot be considered."

This is certainly the doctrine everywhere as to the rulings of the court in reference to instructions given or refused.—Washington & N. O. Tel. Co. vs. Hobson, 15 Gratt., 133, 134; Brooke vs. Younge, 3 Rand., 16; Nay vs. Byers, 13 Ind., 412; Bowles vs. Palmer, id., 448; Carson vs. Allen, id., 479; Waters vs. Saltmarsh, id., 483.

Thus, in regard to the exception to the evidence of B. Rush Wallace, it does not appear at what stage the evidence was offered; and therefore it does not appear affirmatively that the evidence was offered for an unauthorized purpose.—Dennen vs. Haskill, 45 Maine, 430. Other

parts of the facts saved show that the evidence was eminently proper.

Thus the general rule is, that to determine whether the court has given erroneous instructions or not, all the evidence upon the point must be set out in the bill of exceptions. Gale vs. Pearson, 6 Miss., 253; Hamilton vs. Moore, 4 Watts & Serg., 570; Cawthorn vs. Muldrow, 8 Miss., 617; Castles vs. McMath, 1 Ala., 326.

And unless the bill of exceptions shows that all the evidence in the case is set out therein, the presumption is that the evidence offered justified the instruction given. Mason vs. McCampbell, 2 Ark., 506; Trott vs. West, 10 Yerg., 499; same case, 1 Meigs, 163; Wilkins vs. Gilmore, 2 Humph., 140; Reed vs. Philips, 4 Scam., 39.

4. The question of delivery was left to the jury, and the finding was in favor of the delivery. This was a finding upon a point about which there was evidence, and it can scarcely be said that there was contradictory evidence. The rule adopted in Texas is, that where there is evidence of delivery, parol evidence will not be heard to prove that it was only to take effect upon condition.—Walker vs. Renfro, Austin, Oct. T., 1862. For which the learned judge cited Roberts vs. Jackson, 1 Wend., 484; Ward vs. Lewis, 4 Pick., 518, 520. No question can be urged upon the correctness of this finding.—Brown vs. Clarke, 4 How., 15.

The deed contained all the usual forms and recitals of an absolute deed; and by these, as well as by the declarations of the grantor, that he had executed such a deed, the privy in blood is bound by the doctrine of estoppel. Box vs. Lawrence, 14 Tex., 556; 1 Greenleaf's Evidence, sec. 23, and notes to 5th edition.

There has been an effort to make it appear that this conveyance, somehow or other, comes within the rule of a conveyance by a married woman of her separate property, and to deny that she could convey the same except in

the manner required for her privy examination: and yet there can be no such question in the case. If her father conveyed the property in his lifetime, the legal estate passed from him down to the defendants, and there was nothing left for her to convey. The proof only went to the declarations of Nixon, that he had executed such a deed; to her confessions that she knew of the existence of the deed, and that her uncle had acted upon it: and that she had received the benefit of the sale. If Shelby was really the trustee, the defendants could only be reached in equity by proving their knowledge of such a trust, and their participation in the fraud of the trustee.

5. In the confused state of the exceptions, and the positive certainty that in reference to every ruling some of the facts must have been omitted, the court will not look from one bill to another to test the correctness of rulings. Brook vs. Young, 3 Rand, 106; Crawford vs. Jarrett, 3 Leigh, 629; 1 Rob. Prac., 347, old edition.

But should this objection be overcome, the truth could not be ascertained from the record, and the court would affirm the judgment.—Suydam vs. Williams, 20 How., 434.

5. And if the objections to the admissibility of the copy of the deed could be fairly presented, the law of the case is with the defendants. And first, as to secondary evidence: the rule has been settled, in a great case in Texas, that the party wishing to introduce secondary evidence is not obliged to resort to every possible depository, but only to one probable source where the lost instrument might be found.—Lewis vs. San Antonio, 7 Tex., 311.

And in the same case it is held that there are no degrees in secondary evidence, that court adopting the rule in Greenleaf.—(7 Tex., 311, 316.) This rule has been ever since acted upon and acquiesced in in Texas.

So in later cases the court has held, in reference to lost instruments, that *bona fide* diligence is all that is neces-

sary, but that the order of proof is immaterial, and the *quantum* of diligence depends upon the circumstances of each case.—Bateman vs. Bateman, 21 Tex., 433; 1 Greenleaf's Ev., sec. 558. The same case holds that the confessions of the grantor were admissible evidence —Bateman vs Bateman, 21 Tex., 433.

So that it was perfectly competent for the court to admit the certified copy of the lost deed in evidence, or any parol evidence of its existence and contents.—1 Greenlf., § 558, note 2; id., § 85. 2; id., 582, part 3, chap. 4; Lewis vs. San Antonio, 7 Tex., 311 to 318; Doe vs. Ross, 8 Dowl., 389.

The evidence of Wallace, like all the other depositions in the record, went to sustain the existence of the lost deed, and it was warranted by the decision in Lewis vs. San Antonio, it being a rule of evidence respecting real property. In a State where there has been so much land litigation this court will follow without any inquiry into its correctness, even though it should have to overrule its own decisions upon general principles or upon Texas cases.—(McNeill vs. Hallbrook, 12 Pet., 88; Hinde vs. Vatiere, 5 Pet., 398; Wilkinson vs. Leland, 2 Pet., 656; Rundle vs. Delamere & Co., 14 How., 93; Polk's lessee vs. Wendall, 9 Cr., 87; Thatcher vs. Powell, 6 Wh., 119; Elmendorf vs. Taylor, 10 Wh., 133; League vs. Egery, 24 How., 266; Suydam vs. Williamson, 24 How., 433; Jackson vs. Chew, 12 Wheat., 162; Beauregard vs. New Orleans, 18 How., 497.)

6. And let it be remarked, under this rule, that the arguments against the proof of the statements of Nixon and his privy in blood, the plaintiff, about the existence of this deed, is not open to the objection that a married woman cannot be deprived of her property except in the manner provided by the statute. The question was, had her ancestor executed the deed? For if he had, then no descent was cast upon her.

It was no proof that she had parted with *her* property;

but proof that she knew of the existence of her father's deed to her uncle, and had acquiesced in the action of the grantee and her husband upon it. She is suing for the legal estate upon the ground that her father had received no consideration for the deed: but here she is met by the principle of law, so lucidly stated by the judge below, and the further principle that the legal title had passed from her father, through her uncle, to the defendants, and she could not possibly be heard in a court of law to assert her equitable title.—Sheirburne vs. De Cordova, 24 How., 426; Fenn vs. Holmes, 20 How., 481.

Her affidavit against a deed, which she is said never to have seen, but charged to be forged, is an effort to destroy its effect without resorting to a court of chancery to get it out of the way.

7. It is objected that the copy was not filed and notice given under the 90th section of the district court act of Texas.—(O. & W. Dig., art. 469; Hartly's Dig., art. 745.) And the judge is made to say, in the 5th bill of exceptions, (p. 34,) that this had not been done. But, as there is an agreement that the evidence in the case of the same party against Maverick should be used, and there is the plaintiff's affidavit of forgery, the fair presumption is, that there was notice or waiver of notice, else why the affidavit? And what force can it have? If the copy had been filed under the statute the affidavit that the original was a forgery would only have put the defendants upon proof of execution. But what proof? Not the production of the original and the proof of execution, for that is always impossible where the original is lost, but the proof of the circumstances which establish that there was an original; and, as there are no degrees in secondary evidence, this character of proof is not addressed to the court, but to the jury.—(Lewis vs. San Antonio, 7 Tex., 311.)

And if the copy was not filed, to be used as evidence, which would prove itself, then the affidavit was out

of place, and the question of secondary evidence was one for the jury, under the instruction of the court; and, in the absence of a statement of facts or a motion for a new trial, surely this court will not review the facts. Every presumption will be indulged in favor of the verdict. Were the facts before the court, and had a motion for a new trial been overruled, the question as to such a ruling is not one for revision in this court.

As previously remarked, it does not appear that the deed had not been read before the affidavit impeaching it was read. The time and circumstances leave the presumption that it had.

8. Then, as to the affidavit about the forgery, the instruction was more favorable to the plaintiff than the law warranted. It certainly afforded no proof; and with, or without it, the plaintiff had the right to prove the deed a forgery; and with, or without it, the defendants had to satisfy the jury of the existence and contents of such a deed. So that the affidavit imposed neither more nor less proof upon one party or the other, unless the proof was offered under the filing and notice required by the Texas practice act; and the plaintiff assumes that it was not.

9. It is to be observed that this deed was executed in 1838; before the introduction of the common law; before a notary, who duly certified the execution. At that time such a certificate made it one of those public instruments which, of itself, produced faith without further proof of the execution.—(United States vs. Perchman, 7 Pet., 51; Owings vs. Hall, 9 Pet., 625; Mitchell vs. The United States, 9 Pet., 732; Book 3, tit. 7 of Institutes of As. Manual, 1 White Recop., 297; Smith vs. Townsend, Dallam, 569, 572; Herndon vs. Casiano, 7 Tex., 334; Perez vs. Paschal, 7 Tex., 360.)

Other acts authorized the original to be recorded.—Hartly, arts. 2,752, 2,755, 2,784, 2,760, 2,776, 2,777.) The last section, which was the act of 5th Feb., 1841, au-

thorized the registry upon the certificate of the chief justice.

The same principle is re-enacted by the 4th section of the act of 12th May, 1846. Upon the act of the 5th February, 1841, (Hartly, arts. 2,776, 2,777,) it has been held that the deed, having been acknowledged before a notary public, was valid to pass the title without any subscribing witness.—(Meuly vs. Zeigler, 23 Tex., 93.)

And if objection was made to the affidavit of loss it should have been stated then, so that an amendment might have been filed.—(Butler vs. Dunnegan, 19 Tex., 566.) That the act embraced acknowledgments made before the proper officer anterior to as well as after its passage; that it was a healing and enabling act, and should be construed literally.—(Butler vs. Dunnegan, 19 Tex., 565.) The obscurity which has been thought to exist in the Texas registration acts has been explained, and the rule has been settled, that the acknowledgment of the grantor, before a proper officer is as effectual to admit the instrument to record, as proof of execution by the subscribing witnesses. —(McKisick vs. Colquhan, 18 Tex., 151; Paschal vs. Perez, 7 Tex., 357.)

And that a literal compliance with the statute is not required, but only a substantial compliance.—(Moore vs. Alredge, 23 Tex., 479, 480: Dean vs. Willis, 21 How., 644; Phillips' Ev., Cow. & Hill's notes, part 2, n. 254, p. 247.)

The act of 20th December, 1836, (Hartly, art. 2,588,) gave to the acts of chief justices of counties the same force of notarial acts. And the act of 1846 gave power to notaries to take the acknowledgment of deeds to admit them to registration.—(Hartly, art. 2,606.)

The 11th section makes this same acknowledgment evidence of the facts therein stated in all the courts of Texas. —(Hartly art. 2,610.) The notarial act would have made it evidence without registration. The registration is intended to secure priority.

Having been registered in a public office there are several sections of the law which authorized it to be read without filing and notice. It is the record of a public officer, duly certified, &c., and the copy is as admissible as the record itself would be.—(Hartly, art. 744; Paschal vs. Perez, 7 Tex., 360; James vs. Edwards, 7 Tex., 377; Hartly, art. 744.)

It results, therefore, that had the deed itself been produced it could have been read as an authentic notarial act without registration; that the notarial certificate that it was signed, sealed, and delivered by the grantor, authorized its registration in the public office; that the certified copy by the registrar is as high evidence as the record itself would be; and that, as the original could not be produced, the copy of the record was admissible, as secondary evidence.

10. It follows from these impregnable conclusions, deducible from the Texas statutes and the well settled decisions about real property, that the common law doctrine about the delivery of deeds could not shake the Texas rules, were there inconsistency. The laws of that state, transmitted down from the civilians, and substantially re-enacted in the Texas statutes, have clothed notarial acts with a solemnity which always produces *prima facie*, and often conclusive proof. Their very acts arise to the dignity of records.—See White vs. Burnley, 20 How., 250; Watrous vs. McGrew, 16 Tex., 250, and the cases already cited on another branch of this argument. Even as to a married woman's separate acknowledgment, the notarial certificate is conclusive of the facts therein stated, and can only be contradicted by proof of mistake, fraud, or imposition.—Hartly vs. Frosh, 6 Tex., 216. It operates as an estoppel.—id.

But it is not true, as sought to be maintained by plaintiff, that since the revolution notaries execute protocols, and deliver out testimonies, as under the Spanish law. A

memorandum of their acts is all that is required.—(Hartly, Art. 2,609.) The deed with the acknowledgment takes the place of the protocol.—(Art. 2,610.) The record or registration is by the county clerk. This, with the answer in Lewis vs. San Antonio, meets the whole objection, that we should have resorted to the notary's office for the record of the deed. Such records related to the government of our Spanish fathers, before the revolution. Hartly, Art. 2,761; Guilbeau vs. Mays, 15 Tex., 414.

As the notarial certificate of delivery authorized the record, it was for the plaintiff to have resorted to the notary's record, or even to the notary, to prove that his certificate was false or forged.

11. As we have said, the common law rules about delivery cannot be made to control the Texas statutes. But if it were the rule, and if the judge's charge were properly here for revision, it is in the very words of the common law.—4 Kent's Com., 454, and notes; Shepherd's Touchstone, 58; Tompkins vs. Wheeler, 16 Pet., 119; Doe vs. Knight, 5 Barn. & Cress., 692.

The parting with it by Nixon, the course taken by Shelby, and its delivery to the county clerk for record, passed the title to Shelby and his grantees.—Tompkins vs. Wheeler, 16 Pet., 119.

In Maryland, under a precisely similar statute about registration, it has been held that copies of the registration is admissible evidence, without accounting for the absence of the original.—Dick vs. Balsh, 8 Peters, 33.

ANSWER TO THE PLAINTIFF'S BRIEF.

We notice—1. The reference to Zeller vs. Eckert, 4 How., 297. This I understand to be an authority upon our side. It holds that the bill of exceptions is limited to the rulings upon the admission of the evidence, and that only the evidence upon these questions can be thus reviewed, excluding the charge of the court and the verdict of the jury upon the facts.

Upon the luminous authorities upon the relinquishment of the wife's dower I have little to say. They have little application to Texas, where the wife has no dower, and where she can encumber and make liable her own property in various other ways than that prescribed for her form of conveyance.

1. She may make her separate property liable for her own debts and those of her husband, and subject it to execution.—(Cartwright vs. Hollies, 5 Tex., 167; McGee vs. White, 23 Tex., 191; De Blane vs. Lynch, 23 Tex., 29; Cartwright vs. Hollis, 5 Tex., 152; Hollis vs. Border, 5 Tex., 198; Bean vs. Heath, 6 How., 228; Wiley vs. Prince, 18 Tex., 639.)

2. Although the homestead is mentioned in the statute for her separate acknowledgment, during the absence of her husband, or his inability or refusal to act, she becomes the managing partner, and may sell her own property, or the community property, including the homestead.—(Fullerton vs. Doyle, 18 Tex., 12; Wright vs. Hays, 10 Tex., 131 to 134; Blanchet vs. Dugat, 5 Tex., 455; Cheek vs. Bellows, 17 Tex., 616, 617.) In such cases her separate acknowledgment is not necessary.—(Wright vs. Hays, 10 Tex., 135; Blanchard vs. Dugat, 5 Tex., 508.) And even with the husband present, and acting as managing partner, she may sell, and his consent, express or implied, may be given afterwards.—(Thomas vs. Chance, 11 Tex., 637, 639.)

3. She is not allowed to act fraudulently, and she is as responsible for her acts as though she were a *feme sole*.—(Cannon vs. Hemphill, 7 Tex., 200.)

The plaintiff has wholly mistaken our position upon the doctrine of estoppel. What we urged was that the plaintiff, as privy in blood, was estopped by the deed of her father; that the question for the jury was the deed to Shelby *vel non*. The jury found in favor of the defendants, and there is an end of it.

But the plaintiff almost exhausts his argument to establish that there was no such delivery of the deed as passed the title from Nixon to Shelby; and we are cited to authorities supposed to be in point or at least analogous.—(Herbert vs. Herbert, Breese Ill. R., 381–2; Wiggins vs. Lusk, 12 Ill., 132, and others.) The doctrines discussed in these cases may be sound law in Illinois and other common law countries. But the plaintiff is here met with the difference that they were precedents upon facts, fully presented and discussed; whereas here the facts are not before the court. Then the effect of an acknowledgment before a justice in Illinois carries no certificate that the deed was delivered, whereas the notarial certificate in Texas is "evidence of all that it states." There was proof in those cases that the deeds remained in the hands of the grantor. There is no such proof here. In Maynard vs. Maynard, 12 Mass., 456, there was evidence that the father meant to retain control of the deed, and did cancel it after the death of the son.

The plaintiff seems to have grown weary of his exception that the court refused to charge the jury in the language of the reasoning of this court about the objectionable mode of taking depositions *de bene esse*. This reasoning was, at most, a speculation. But it is enough that this court has, in many cases, remarked upon the fact that the district courts of Texas have adopted the rules of practice of that state; and by the 99th section of the judiciary act the judge is forbidden to charge upon the *weight of the evidence*.—(Hartly, art. 753.)

Respectfully submitted.

GEO. W. PASCHAL,
For Defendant.

Supreme Court of the United States.

No. 40

P. A. YOUNGE AND HER HUSBAND,
JAMES YOUNGE,

vs.

No. 40

FRANCIS GUILBEAU ET AL.

Joseph L. Pearson, printer, 511 Ninth street.

Additional Brief
Filed

Supreme Court of the United States.

P. A. YOUNGE AND HER HUSBAND JAMES YOUNGE
vs.
FRANCIS GUILBEAU ET AL.

No. 40.

In reply to the printed argument for the defendants, I must take leave, with due deference to the superior learning of their counsel, to say, that he appears to me, from haste in the preparation of his argument, to have greatly misconceived the facts of the case as presented in the record, as well as the applicability of many of the authorities cited in support of the positions which he assumes. It would be, however, a useless consumption of time for me to attempt even an enumeration of the differences between us in these matters. The court will ascertain the facts for itself from the record, and its superior learning will sift the authorities applicable to them.

The defendants' counsel, I must also say, seems to me to be conscious of the weakness of the positions assumed in the court below, and therefore attempts to escape by a flank movement from the necessity of endeavoring to sustain them. He urges that the merits of the case should not be considered: 1st. Because only two of the plaintiffs' bills of exceptions are marked "filed" by the clerk. 2d. The exceptions do not appear to have been taken or the

bills drawn out and signed by the judge in due time. 3d. It does not appear that all the facts in evidence upon the trial in the court below have been brought into the record.

1st. The filing of a paper consists in its deposit with the proper custodian.—(Holman vs. Chevaillier, 14 Tex., 337.) In this case the supreme court affirmed the judgment, although the entry by the clerk of "filed" was not even made *nunc pro tunc*. This seems to have been presumed or regarded as a mere clerical act, immaterial under the circumstances. When the record shows that the court below took action on a paper, it will be presumed that it was marked "filed," although it does not appear so from the transcript.—(Knight vs. Holloman, 6 Tex., 153.) An entry in the record is better evidence than the endorsement upon the papers by the clerk.—(Hopkins vs. Donaho, 4 Tex., 336.) A paper or matter which is incorporated into and becomes a part of the record, is to be taken as such, though not marked "filed" by the clerk.—(Jewett vs. Miller, 19 Tex., 299.) Bills of exception are made a part of the record by order of the judge himself. (Gaines vs. Selman, 16 Tex., 312.)

The record in fact, however, shows that all the bills were filed. The minutes of the court, copied into the record, (p. 2, p. 13,) say that "they are filed and become a part of the record," and immediately afterwards, and in unmistakable connection, they are set out in *hic verba*. If they appear from the record as filed, it is surely immaterial how or when this is shown. That the clerk unnecessarily copied into the transcript his entry on two of the bills, neither makes it essential for the others, nor shows that they are wanting it. If the transcript showed that these bills had not been marked "filed," which, as we have just seen, is directly contrary to the facts, the order of the judge that they shall be enrolled and made a part of the record, must be held sufficient to justify this court in acting upon them. I might with as much reason

object to the judgment because the verdict does not appear to have been "filed."—(Bennett vs. Dowling, 22 Tex., 662.)

2d. Both policy and principle concur with authority in requiring that exceptions cannot be taken to the ruling of the court, unless at the time such ruling is made. But if the exceptions are taken at the proper time, the progress of the case need not, and in practice is not, usually delayed for their instant preparation. This may be done at such time as is most convenient for counsel and the court. The exceptions in this case show as plainly as language can express, the idea that they were each and every of them taken and reserved at the time the particular ruling was made by the court of which we now complain. The object and purpose of the law is in this fully satisfied. And the transcript as unmistakably shows by its copy of the record of the proceedings had in the progress of the trial of the cause, that time was given for the preparation of the bills, and that they were brought into court and were made a part of its record. For, says the record in its detail history of the progress of the trial: "And now the plaintiff and defendants having noted their exceptions, and time having been given them to prepare their bills of exceptions, the jury retired," &c. Again, after detailing the submission of the case to the jury, the verdict and judgment then follows immediately thereafter, and unquestionably as a part of the entry or history of the case preserved in the record: "And afterwards, time having been given both plaintiffs and defendants for the preparing in due order, their several bills of exception, and the same having been examined, and signed and sealed by the judge, they are filed, and become a part of the record." This is certainly all, and more than all that is required. Even without this, the judge having signed the bills, and ordered their incorporation in the record, it must be presumed to have been properly done. The

cases upon which reliance is had, are where the record shows the contrary.

3d. The counsel for the defendants relies upon decisions from courts where peculiar systems of practice prevail, widely different from that recognized in this court. And still he is not fully borne out, even by them. The Indiana cases to which he refers were controlled by a rule peculiar to that state. Texas also has a peculiar system. There is no distinction between cases of law and fact. The appellate court may reverse for error in law or fact. Hence it is almost the universal practice to carry cases up on statements of fact, and where the case does not require a discrimination it is frequently said, "there being no statement of facts the charge cannot be considered." But I think no case can be found in its twenty odd volumes of reports in which the court has refused to consider a charge shown by bill of exceptions upon particular facts set out in it to be erroneous, because all the facts in the case were not incorporated in the bill. Indeed it has frequently acted directly to the contrary.—(See Galbreath vs. Templeton, 20 Tex., 47; McMullen vs. Kelso, 4 Id., 235; Hill vs. Crownover, Id., 8; Holman vs. Butler, 2 Id., 297; Secrest vs. Townsend, 1 Id., 414; King vs. Gray, Id., 62; Harris vs. Leavitt, 16 Id., 340.) If the bill necessarily shows error the case will be reversed. (Wells vs. More, 15 Id., 221; Harry vs. Hill, 8 Id., 591.)

This court does not deal with the finding of the jury upon the facts, it only considers the questions of law which are presented in the record. Why then encumber the record with those having no connection with these questions? On the question as to the validity of the deed in this case, for want of delivery, should the bill have been encumbered with the testimony as to the character and value of the improvements upon the property? Would this have thrown any light upon the questions to be decided by this court? If not why bring them here? I fully admit that any fact and circumstance necessary to enable

this court to perceive and understand the precise ground upon which the court below made the ruling complained of must be brought into the record. But more than this is unnecessary, in fact, would be surplusage, if not impertinent. The counsel suggests that there may be other facts. But there is not the slightest evidence in the record to induce such a conclusion. The judge has in express and unmistakable terms indicated the facts upon which his rulings were made. To insist seriously that he was ignorant as to the facts upon which his rulings were made or has permitted the bills to embody in the record only a part of these facts would be a discourtesy to that learned and distinguished officer, of which I would not willingly be guilty. If such a supposition could be indulged it would be better to act upon the record as it stands than to risk the irreparable injustice of an affirmance of it upon we know not what.—(Weisinger vs. Chisholm, 22 Tex., 670.)

This court has sometimes, when necessary to ascertain the facts, looked from one bill of exceptions to another, although they did not, as in this case, refer to and incorporate themselves into each other.

The counsel for defendants says the question of delivery was left to the jury. I insist that it was not properly a question for the jury, because they had by their own testimony disproved it. But if this is not so, it was improperly left to them by the instruction, that the copy of the deed was *prima facie* evidence. The jury was influenced and controlled in their finding by this and the other kindred and erroneous charges. The genuineness or delivery of the paper was the matter in dispute, yet the paper itself destroyed their own testimony, that if not spurious it had remained in Nixon's hands until his death, and had never been seen or heard of by the grantee before that event, and of its own force established directly the contrary state of facts.

It is insisted that we shall discredit the record and con-

clude that the copy of the deed had been filed and notice thereof given. The only reason suggested for disregarding the facts verified by the hand and seal of the judge, is that that there is another suit by the plaintiff against Maverick, and that there was an argeement to use the testimony in that case, also in this. I must confess that I am not able to see how the conclusion can be deduced from the premises. If it had been filed in that case and was thereby to apply to this one, it doubtless should, could, and would have been shown. But if the presumption is correct with reference to the deed and notice it must also apply to the plaintiffs' affidavit, and the case then stands precisely in its present attitude.

Unless the statute was complied with, the deed or copy could not be received in evidence, except upon proof of all the essentials to constitute a valid and complete deed.—(Gamage vs. Tranick, 19 Tex., 64; Cheatham vs. Riddle, 8 Id., 166.) It is so, even as to the deed of a sheriff.—(Wooten vs. Dunlap, 20 Tex., 186.)

It is intimated that the plaintiff was seeking a recovery, upon the ground that the deed was without consideration. This is a mistake, for the plaintiffs' counsel have, at all times, admitted that if the legal title passed to Shelby, this was an end of the case. Her counsel were not so ignorant of the practice in the United States courts as to suppose a trust estate could be reached by a suit on the law side of the docket.

It is said the plaintiff had never seen the deed, although she has filed an affidavit impeaching it. Is this a reason why a spurious deed should pass unchallenged? If so, the forger would secure his title by concealing or destroying the forged instrument after placing it upon record. The law does not require a positive affidavit of forgery, it goes more to the *belief* of the affiant; many facts may justify this when an inspection of the deed would not.

The Mexican system of passing title by authentic act before a primary judge or notary public was abrogated by

the act of December 20, 1836, (Hart Dig., Arts. 2,752 to 2,757,) and that by deed, contemplating registration in the county where the land is situated, was substituted in its place. By this law proof of the execution of the deed or acknowledgment could be made before the county clerk or the chief justice of the county court, or county judge, as he is indifferently styled.—(Hart Dig., Arts. 2,752, 2,755.) The same statute, (Hart Dig., Art. 2,588,) makes the chief justice ex-officio notary public. But he is not authorized in his latter capacity, by this law, to take the proof or acknowledgment of the execution of deeds, or to make certificates to authorize their registration.—(See Arts. just referred to, also Art. 2,760.) This power was not conferred upon him until the passage of the act of February 28, 1840, where it is extended to district judges and notaries public, as well as chief justices and clerks of the county courts, who alone had been previously authorized to act.—(Hart Dig., Art. 2,768.)

The defendants insist that peculiar effect shall be given to the certificate to this deed, (though they have only the copy, with no authority to support it as evidence, when the plaintiff had presented her affidavit, for there is no more presumption then that the certificate from which the clerk copied was made by the officer, than that the deed was the act of the alleged grantor,) because, as they say, it is the act of a notary public. I take issue, both to the question of fact and law. Legrand was chief justice, and by virtue of this office, he performed the functions of a notary, but his notarial functions gave no additional solemnity to his official acts as chief justice. He styles himself, in signing this certificate, "C. J. C. C.," (that is, chief justice county court,) "and ex-officio notary public." To which of these capacities shall we refer the act? Certainly to that of chief justice, in which it was then authorized by law, and not that of a notary, in which it was not. At that time sheriffs in Texas were ex-officio tax-collectors. Could it be said, because that officer had

signed himself in this way to a levy of an execution, that it could be construed as a distraint for taxes.

Defendants' counsel have referred to a section in the statute of 1846 (Hart. Dig., art. 2,610,) to uphold the construction of this certificate for which he contends. No just construction of it can, in my opinion, so enlarge its scope. It evidently has references to the certificates that are made by notaries in the discharge of their general and appropriate functions, and when their certificates are made and intended to be used directly as evidence in court. It was the object of this law to give authenticity to a protest and notice, and acts of this kind, by the proper officer without proof of their execution. It placed them upon a footing with other ministerial officers, to whose official act the law attaches verity. It was not to enlarge the effect of the certificate the notary is authorized to make in a previous section of the statute (art. 2,606) beyond its special and defined purpose. He is but one of a class of officers who can perform this same duty. Surely it is not to be supposed that when discharged by a notary it is of more dignity and entitled to more credit than if performed by the highest judicial functionary in the state. Yet the act of the latter has not, unquestionably, the quality claimed for the notary's. The construction contended for would also destroy the policy and conflict with the letter and spirit of the section of the law regulating proceedings in the district court (Hart., art. 745, quoted in my argument) in respect to this precise point, and which was enacted upon the same day with this law.

The counsel of the defendants seems to feel the untenableness of his position, and therefore seeks to change his base and plant himself upon the ground that the deed, from the peculiar sanctity given it, I suppose, by the *ex-officio* character of the chief justice, need not have been actually delivered, for, certainly, as a general proposition, (and, as I think, as an universal one,) a deed must be delivered, as well in Texas as elsewhere; and to a complete

delivery an acceptance, express or implied, is essential.—(Dikes vs. Miller, 24 Tex.)

The case upon which reliance is placed to sustain this proposition is Meuley vs. Zeigler, 23 Tex., 93. The point in this case is, that a deed is valid if acknowledged before a notary public, although there are no subscribing witnesses to it; and hence the court say "it was competent for the party offering it to prove its execution either by the grantor, if he were not interested in the suit, or by any other person who saw the deed executed." It is manifestly directly in point against the defendants.

It seems also insisted that the deed may be sustained as an authentic act under the Spanish or Mexican system of conveyancing. This system of conveyancing, as we have seen, gave place to that by deed previous to the date of this instrument. It will be observed that the paper itself bears internal evidence of this fact. Its form is that of a deed with attesting witnesses, and it does not purport to have been done in the presence or with the sanction of an officer. The acknowledgment for registry bears date of a subsequent day.

But if this conveyance had been of that character, when offered in evidence its authenticity must be established.—(Beaty vs. Whitaker, 23 Tex., 526; Titus vs. Kimbro, 8 Id., 210; White vs. Brumley, 20 How., 250.)

The instrument in the case of Butler vs. Dunagan, 19 Tex., 559, to which defendants refer, was passed before a *primary judge* under the law of January 20, 1836. It merely holds that the notarial power of this officer (for, indeed, the act was notarial in its character,) authorized the record of the instrument under the law of 1841.—(Hart. Dig., art. 2,777.) The case shows that the instrument was relied upon as a recorded instrument, proof of the execution of which was not thrown upon the party offering it by affidavit impeaching its genuineness. It is, consequently, an authority against the claim that the cer-

tificate of acknowledgment to the deed in this case makes proof of its authenticity.

To comment further upon the many positions of the defendants from which I dissent would protract this discussion to too great a length.

REVERDY JOHNSON,
Attorney for Plaintiffs.

Supreme Court of the United States.

No. 40.—December Term, 1865.

P. A. YOUNGE AND HER HUSBAND,

JAMES YOUNGE,

vs.

FRANCIS GUILBEAU AND OTHERS.

Joseph L. Pearson, printer, 511 Ninth street.

Brief for Pff in Error
Johnson

Supreme Court of the United States.

Supreme Court of the United States.

P. A. YOUNGE AND HER HUSBAND JAMES YOUNGE
vs.
FRANCIS GUILBEAU AND OTHERS.

No. 40.

This case is brought before this court by a writ of error from the District Court for the Western District of Texas, sitting at Austin. It is an action in conformity with the statute of the state of Texas, of trespass to try title to a lot of about four acres of ground, situate in the city of San Antonio.

Upon the trial in the court below, the plaintiffs in error, who were the plaintiffs in that court, proved title to the *locus in quo* to have been originally in George Antonio Nixon. That said Nixon was dead, and that the plaintiff Prescilla Ann, was his sole heir. The defendants also claimed under Nixon, and therefore did not, and could not dispute his title. But they sought to show that the title had passed from Nixon to Alfred J. Shelby, through whom by derivative conveyances they claimed to have acquired it; or if this was not the case in point of fact, that the plaintiff, Prescilla Ann, was estopped by her acts and declarations from asserting the contrary, and that thereby as against her they became possessed of the superior right and better title. In the efforts of the defendants to maintain these positions a number of rulings

were made by the learned judge, who presided on the trial of the cause in the court below, to which objection was taken by the plaintiffs, as will be seen by the several bills of exceptions which were taken by them at the time, and which will be found in the record, and which present the grounds for the several assignments of error to which the attention of this court is invited.

Before entering upon the consideration of the questions involved in the case, I will observe, in preparing the record the due order in which the bills of exception should have been presented has, to some extent, been neglected by the inaccuracy with which they have been numbered, and the points in the case do not therefore present themselves with the clearness and regularity of sequence which is desirable, and which would otherwise occur. I will also notice the fact that the minutes of the clerk referring to the pages of the record for matter not copied but referred to and made a part of the record, does not correspond with the printed record. The subject-matter of the references, however, enable them to be readily found.

The 1st, 2d, and 3d assignments of error are taken to the rulings of the court, as shown in the plaintiff's first bill of exceptions, (print. rec., p. 13, 14, 15,) overruling their objections to the testimony of Wallace, as to parol declarations of the plaintiff, Prescilla Ann, while a feme covert, from which the defendants sought to estop her from the denial of their title. The charge of the court, given at the instance of the defendants, on this testimony, and refusal of that asked by the plaintiffs.

I insist that said testimony was improperly permitted to go to the jury. It was claimed and (I am informed by the defendants' counsel,) will be insisted here, that it legitimately tended to establish both of the grounds which I have already stated were assumed by the defendants, viz: 1st, That the title to the lot in controversy,

in fact, passed from Nixon by deed to Shelby. 2d, Her admission that Nixon had made a deed to Shelby concluded her as against the defendants, from now asserting the contrary. It was in the latter view that the testimony was most urgently presented and most effectually used before the jury. And although the learned judge before whom the case was heard did not by any explicit charge give a direct and specific sanction to this construction of this testimony, yet it is manifest from the vague and indefinite instruction which he gave (print. R. 15,) at the instance of the defendant, and the refusal to qualify it as asked in precise terms by the plaintiffs, the jury were left to any erroneous impression of this character which the defendants' counsel had been able to lodge upon their minds.

The almost universal American system for the conveyance of their property by married women by an examination privy and apart from their husbands, is in full force in Texas, with even more than its usual stringency, for there it is applicable to every character of property or interest of which she may be possessed.—(O.&W. Dig. Laws of Texas, art. 207.) This being the case, it can hardly now be regarded as an open question that nothing short of a compliance with these statutory requirements will be effectual to divest a *feme covert* of her title to real estate. That no acts of hers *in pais*, whether fraudulent or otherwise, will preclude or estop her, or those claiming under her, from asserting her title. The question is so completely and fully settled by numerous adjudged cases of the highest authority that a reference to them is all that is necessary.

In the case of Purcell vs. Goshorn, 17 Ohio, (Griswold,) R., 105, it is said, "No precedent, as it is supposed, can be found of a decree against a *feme covert* to convey lands, held by descent or the usual conveyance, upon the ground of her having executed any defective conveyance, whether

upon a full consideration paid or not; and the fraud of the wife in the transaction would make no difference."

And in Lovell vs. Daniels, 2 Gray, (Mass.,) 168, the court, after a lengthy detail of the facts, which will be found infinitely stronger than in this case, under the most favorable view of them for the defendants, proceed to say: "This raised the material question at issue between the parties, whether a married woman and her heirs may be barred of her estate by an estoppel *in pais*.

"She can make no valid contract in relation to her estate. Her separate deed of it is absolutely void; and a covenant in such a separate deed would be likewise void. If she were to covenant that she were sole, was seized in her own right, and had full power to convey, such covenants would avail the grantee nothing. She could neither be sued upon them nor estopped by them. The law has rendered her incapable of such contract, and she finds in her incapacity her protection, her safety, in her weakness. Her most solemn acts, done in good faith and for full consideration, cannot effect her interest in the estate, or that of the husband and children. The strongest possible example of this was presented in the case of the Concord Bank vs. Bellis, (10 Cush. —) above cited, in which it was held that when an estate was conveyed to a married woman, and she at the same time gave back a deed of mortgage to secure a part of the purchase-money, such deed of mortgage was wholly void. And we think a married woman cannot do indirectly what she cannot do directly—cannot do by acts *in pais* what she cannot do by deed; cannot do wrongfully what she cannot do rightfully. She cannot, by her own act, change her legal capacity to convey an estate."

"This doctrine of estoppel *in pais* would seem to be stated broadly enough when it is said that such estoppel is as effectual as the deed of the party. To say that one

may, by acts in the country, by admissions, by concealment, by silence, in effect do what could not be done by deed, would be practically to dispense with all the limitations the law has imposed upon the capacity of infants or married women to alienate their estates."

In Domineck vs. Michael, 4 Sand., (N. Y. Sup. Ct.,) R., 423, it is said, "The law has been settled from time immemorial that a married woman cannot bind herself, or her heirs, by an estoppel arising upon a deed or upon matter *in pais*."—(Coke Litt., 352; Cro. Eliz., 39,700; Com. Dig. Estoppel C., 2; Smith Lead. Ca., 438.)

To sanction the doctrine here contended for would, as has been well said by this court in case of Drury vs. Foster, 2 Wall., (U. S.,) R., 24, involving substantially the very question here presented, introduce an entirely new system of conveyances of the real property of *feme coverts*. —(See, also, Butler vs. Athwater, 5 Conn., 492; Martin vs. Day, 6 Wend., 9; Powell vs. Manson Manu. Co., 3 Mason, 347; Carr vs. Williams, 10 Ohio, 305; Trimmer vs. Henry, 16 Pen. State, (4 Harris,) 484; Knowles vs. McCamly, 10 Page, 342; Martin vs. Duelly, 6 Wend., 9.)

But, it is urged, the testimony may not be admissible to divest the plaintiff's title by estoppel, yet it was so for the purpose of proving the fact that her father parted with the title before his death, and, therefore, that it never vested in her. This seems to me a mere subtlety in the presentation of the real question, which we have just shown is so conclusively settled by the authorities. The policy of the law is founded upon the supposition that a married woman may not fully understand the nature of her interest or rights or the true legal import of her acts; therefore she must be fully advised of the same by the officer appointed for this purpose. She may be unduly influenced or controlled by her husband, hence the examination must be privy and apart from him. Now, if she

cannot in any other manner than as prescribed by the statute, by deed, act, or word, affect her title or create a charge against herself or her estate, can she, by her mere parol declaration, made, perhaps, under the force of the very influence from which it was intended by the statute to guard her, or in ignorance of its legal import, authorize the jury to say that the property was not hers, when, but for this declaration, they must affirm directly the contrary? Where is the difference in principle in the two cases? The most that can be said is, that in the one by her admission she passes her title away, in the other she admits it away. Was the law intended to protect her against the former and not the latter? If we so conclude it must be because the cunning of words is of more force than legal principles.

But I insist that upon no just analysis of this testimony can it be contended that it imports an admission by the plaintiff that the title of the property in question had passed from her father during his life, but its true construction is directly the reverse. It is true the witness says she told him her father "had conveyed some real estate." Now, although I do not believe that there is sufficient evidence in this record (and all that there was in the case is here) to authorize the conclusion that Nixon really signed any such pretended paper as that under which the defendants claim; yet it must be borne in mind that that is not the vital and controlling question with reference to this pretended deed upon which the plaintiffs staked their case with unfaltering confidence. Without caring to pause for the consideration of or caviling over the mere preliminary questions, they implanted themselves, as in an impregnable citadel, *upon the failure of its delivery*—that the grantor never parted with its custody and the grantee did not accept or know of its existence until after the death of the grantor. Shall we, then, upon the declara-

tion of a witness in a de bene esse deposition, taken years after its supposed utterance, that the plaintiff, ignorant of her rights and ignorant of the legal import of her language, told him that her father "had conveyed" "some real estate, including the most valuable house and lot, and some unimproved lots in San Antonio," infer that all the necessary and vital ingredients in the final and complete consummation of a perfect and absolute deed had been fully consummated, especially when the defendants have themselves brought into court as their witness the supposed grantee in this very deed, who says he never accepted or heard of it, if it existed, until years after the grantor's death, and did not even then see it.

I think it will be readily admitted that such terms as the one in question, are often, if not generally used in ordinary conversation, without the slightest reference to the question of delivery; and when we consider the nature of this testimony, the manner in which it is brought before the court, the fuller and more precise testimony of the defendants themselves to the very point, the court below should have held this loose expression inadmissible. But it may be said that as the word might have been used with reference to a conveyance consummated by delivery, the testimony should have been admitted, however worthless it might be in comparison with that which was directly to the point in issue. If this were ordinarily correct, it would be inapplicable in the present instance; for if the inference could be drawn from the isolated expression which I have quoted, that the plaintiff thereby admitted that her father had parted with the title to the *locus in quo* before his death, it is fully and conclusively negatived by the subsequent part of the testimony. For the defendants having adduced this testimony for the purpose of sustaining their doctrine of a title by estoppel, studiously endeavor to prove, by her additional declarations, that she was consenting to the sale; and that

though the property had not brought its full value, "she wanted money then, and had rather have the sum for which the sale had been effected, than the fair value of said property at a future, and, perhaps, distant day." Could language be used to indicate more clearly the plaintiff's belief that the property was unquestionably hers, had been dealt with as hers, and as the defendant contended, that she had received the proceeds of the sale.

The objection to the testimony for its vagueness and uncertainty as to time, place, circumstances, and subject-matter, is well taken.

I make one additional observation on the question of estoppel. It is a familiar principle, that there can be no estoppel unless the act or thing from which it is claimed to spring, has induced the action of the party claiming its benefits. There is no pretence in this case that the defendants, or any parties under whom they claim, were induced to purchase from anything which was either said or done by the plaintiff. It is not made to appear that she had any knowledge of the transaction until after the consummation of the sale; or that the defendants ever heard of the satisfaction which they insist she expressed at its result, until brought to their knowledge by that drastic and powerful engine for eliciting truth, *a de bene esse deposition*.

The charge given at the instance of the defendants upon this testimony, (print. rec., 15,) was vague, imperfect, and uncertain, and furnished the jury with no legal guide for determining the effect to be given to this testimony. They were, consequently, confused and misled by being left to grope in the dark, or to follow their crude and illegal conclusions as to the effect upon her rights, of these alleged admissions on her part. When we consider the specious manner in which this instruction is drawn, and that the jury were told, in another part of the charge, (printed rec., 26,) that it was immaterial "whether the deed was actually delivered to Shelby or

not;" also, that the charge with respect to this testimony, asked by the plaintiff, was refused, there can be but little doubt that the jury supposed it their duty, if they believed the plaintiff had made the statement alleged by the defendants, to return their verdict against her.

Be this as it may, it was the unquestionable right of the plaintiff to have the jury properly instructed as to the legal effect of the evidence which had been permitted to go before them. If I am right in the views I have expressed in respect to the question of estoppels, the charge asked by the plaintiff presented the most favorable view that could be taken of it for the defendants—even more so than is warranted by cases to which I have already referred—and the refusal of it was, therefore, clearly error.

The fourth, fifth, and sixth assignments of error are based upon the ruling of the court upon the predicate laid by the defendants for the introduction of secondary evidence of the existence and contents of the supposed deed from Nixon to Shelby, and the charges given by the court, which are set out in the plaintiff's second bill of exceptions. The burthen of proving the due execution and delivery of the deed, and its contents, was upon the defendants. Being unable to produce the original deed, they relied, as a predicate for the introduction of secondary evidence, upon the affidavit of James, one of the defendants, the affidavits of I. A. and Geo. W. Paschal, the defendants' counsel, and the answers of the plaintiff's counsel to a rule taken against them by the defendants. The affidavit of James states that the deed is not in his possession, and he is informed and believes that it is not in the possession of any of his co-defendants, (but he does not state upon what he founds his belief, or from whom he derives his information, or that he had ever even applied to his co-defendants for information upon the subject;) that he believed it was returned to Horton, and, as he is informed and believes, was afterwards deliv-

ered to the plaintiff and her husband. (But the source of this information, and the foundation upon which he rests his belief, are still withheld.) That Quinn, a purchaser under the deed to Shelby, through whom the defendants claim, had left the state some ten years, and that his place of residence was unknown to him, "and he was informed and believes, to his co-defendants." The affidavit of defendants' counsel is of the same vague and unsatisfactory character. They say they are "informed and believe that at the time of the purchase, the deed was submitted and shown to Quinn and Mavrick, and was put upon record—they believing it to be genuine. (A very immaterial matter on this enquiry, if intended for the court, and very objectionable if intended indirectly for the jury, and not at all satisfactory in furnishing a solution of affiants' means of learning the fact.) That the deed was returned to Duffield, and never passed into the hands of the vendees under it, Mavrick and Quinn, (facts still stated upon the predicate of their belief and undisclosed information.) "That their clients and themselves have made diligent search at San Augustine and Nacogdoches for said deed, and cannot find it." But the nature and character of this diligence they did not deign to disclose. The answer of the plaintiff's counsel to the rule taken upon them in the midst of the trial, shows that they have no knowledge of said deed beyond the record copy in the office of the clerk of the county court of Bexar county. That they are informed by their client and her attorney in fact, who reside in the state of Mississippi, that all the papers of the plaintiff, that have come to their possession or knowledge, touching, or in any way connected with her business in Texas, were in the hands of said attorneys, and that said deed, or anything of like import, was not among said papers.

I submit, with the utmost confidence, that the objections taken by the plaintiff to the predicate laid by the defendants as aforesaid, for the introduction of secondary

evidence, should have been sustained. It was not pretended, and could not be pretended, with the slightest show of reason, that there was any attempt at following the rule prescribed by the statute of the state of Texas, authorizing the reading in evidence in certain cases, copies of recorded instruments when the originals cannot be procured—to which I will invite the more particular attention of the court upon the consideration of a subsequent exception. The only question then is as to its sufficiency at common law. The bare reading of the affidavits and the objections, it seems to me, furnish the answer. The defendant says the paper was returned to Horton. He is not asked about it, although his deposition was taken. The counsel say it was returned immediately to Duffield. No application is made to his administrator to search among his papers. The vendees, Mavrick and Quinn, were not applied to for it or for any information about it. The counsel say, however, that they returned it to Duffield because there was other lands embraced in it than purchased by them. Should not information have been sought from the subsequent purchasers under the deed, if such there were, as we must suppose from this statement. Both affidavits contain merely the inferences and deductions of the affiants and not the facts. Conclusions were for the court and not for the affiants.

The charges of the court, to which exception was taken in this bill of exception, will be passed over for the present and will be disposed of in a subsequent branch of the case when I come to consider some of the other charges to which exceptions were taken. I will only now say that they give to the copy the same effect as the original would have had if before the jury with *prima facie* evidence of its genuineness, and thereby improperly shift the burthen of proof from the defendants to the plaintiff. The copy of the deed is made effectual against her, because the original was not produced on notice to her counsel during the progress of the case, though she was residing and

in fact absent many hundred miles from the place of trial—a deed adverse to her interests and of which she was not the legal or presumed custodian—a paper not shown to have been ever seen by her, much less to have been in her possession. Although the answer of her counsel to the rule denied all knowledge of it and justify the conclusion that she had neither its possession or control, if indeed, such a paper was ever in existence. And this, too, notwithstanding the fact that the testimony of defendants themselves fully justifies and conclusively sustains the issue of *non est factum*, which the plaintiff, under oath, had substantially tendered as to its genuineness.

The seventh, eighth, ninth, tenth, and eleventh assignments of error are taken to the several rulings of the court set out in the third bill of exceptions. This exception embodies the testimony upon which the defendants relied to establish the validity of the deed to Shelby. Also the charges given by the court in respect thereto, and those refused, from which, with those to which I have just referred, which bear upon some of the same points, will be seen the view of the law of the case taken by the learned judge who presided upon its trial.

The burden of proof of the formal execution of a deed is upon the party claiming under it. "This proof consists in producing the deed, removing any suspicions arising from alterations made in it, and showing that it was signed, sealed, and delivered by the obligor," &c.—2 Greenl. Ev., sec. 294. It was incumbent upon the defendants to prove the delivery of the deed to Shelby, whether the plaintiff filed the affidavit as to her belief of its forgery or not; that was only necessary when it is sought to use the copy from the records as evidence unthe statute of Texas. Of which more hereafter.

What, then, is the testimony offered by the defendants to sustain this issue? For I will take no account of that of the plaintiff. It is the testimony of Wallace as to the

statement of the plaintiff, to which I have heretofore referred. The testimony of Johnson that he had "heard Maj. Geo. Antonio Nixon mention the circumstance of having made a deed to some property at San Antonio to Alfred I. Shelby, but did not recollect what it consisted of, but to the best of his recollection it was town property, meaning town lot, or lots in the city of San Antonio." Copy of the deed and certificate of the notary public before whom it was acknowledged for registration, that it was signed, sealed, and delivered. The copy of the deed and certificate are not set out in this bill of exception, but as they were admitted to the jury, as appears in the sixth bill, I give the defendants the full benefit of it in the present connection. Now if this were all the testimony, and it were legitimately before the jury, which I am not now contesting, it might, with plausibility, be said to present a *prima facie* case for the defendants, and authorize the general charge given by the court, to which objection is taken in the bill of exception, now under consideration. But this is not all of the testimony of the defendants. They made the alleged grantee, Shelby, their witness, and took his testimony under circumstances, (by de bene esse deposition,) best calculated to present it in the most favorable light for themselves. This testimony puts at rest beyond the possibility of dispute any question as to the delivery of this deed.—(Print. R., 22 and 23.) Shelby himself tells us that all he knows about the alleged deed is that Duffield, after Nixon's death, informed him that this property had been conveyed to him by Nixon, and procured him under pretence, and with the belief, on his part, of its being a reconveyance of the property to the plaintiff, to execute the power of attorney, no doubt, under which the defendants claim. This, of itself, would have been sufficient to vitiate and defeat the defendants' title.—(Utterback vs. Beners, 2 McLean R., 242.) But Duffield did not even exhibit to him the deed, (for the pretended one was probably of his own manufacture, and he did not

wish to submit it to Shelby's inspection,) and he says in emphatic terms, "I am not apprised of any transfer of said property to me by Geo. Antonio Nixon, and have no claim to it." All that was shown to Shelby by Duffield was a mere list or memoranda of property with Nixon's name written underneath it, but not a conveyance to or from any one, and a conveyance from Nixon to Shelby by an endorsement upon its back of the bond from Smith to Nixon for the Delgado certificate for a league of land. If the deed was in existence why was it not shown, but these unimportant papers substituted in its place? The only rational conclusion must be that it would not bear inspection. This list, however, with Nixon's name to it, and the transfer to Shelby of Smith's bond, furnish the key and explanation to Wallace's testimony as to his conversation with the plaintiff, given after the lapse of ten or twelve years, and that of Johnson as to what he had heard said by Nixon, certainly more than fifteen years previous to the taking of his deposition. Nor did the defendants stop simply with the direct and positive testimony of Shelby. They also proved by Blunt that Shelby's testimony under oath was consistent with his declarations upon the same point, viz: that "Duffield told him that he found a deed among the papers of G. A. Nixon for some property, and he, Duffield, thought he did it for the purpose of saving it."

Now as delivery is the final and controlling element in the essentials of a complete and final deed, we need not cavil over the alleged signing, sealing, or acknowledging for registration of the instrument before the notary public. These things may be all as alleged, yet they do not at all conflict with the direct and positive testimony of the defendants themselves on the subsequent and final point of delivery. It proves simply that Nixon had passed through certain stages in the execution of the deed, not that he had performed the final and conclusive act necessary for its completion. These preliminary acts might, it

is true, if there were no direct testimony, in some cases, authorize the presumption of final consummation. But in the present case we are not left to inferences or presumptions, we have direct and indisputable testimony by the defendants themselves upon the very point in dispute. That delivery is essential to the validity of a deed, must of course be admitted, and that there can be no delivery without the consent of the grantee is equally clear. The facts in this case, as they are claimed by the defendants, are so analogous to those in the subjoined cases from Illinois and Massachusetts, that I beg leave to quote them at some length.

In Herbert vs. Herbert, Breese Rep., 278, the court say: "The facts disclosed in relation to this deed are, that it was found among the papers of Thomas F. Herbert, after his death, by Slade, his administrator; that the deed had never been in the possession of the grantee, the administrator having, after its discovery, delivered it to a third person, and that the administrator did not know where it was. The original deed was not produced in evidence nor its absence accounted for, but by the records of the county, which showed that the deed had no subscribing witnesses, it appeared that it was acknowledged before a justice of the peace, bore date on the the 29th of September, 1818, and was recorded on the 15th of January, 1819."—(The grantee died in 1821.)—"The defendant proved that Thomas F. Herbert was, in 1812, indebted unto the grantee, John C. Herbert, in the sum of $1,200, and that he had been compelled to pay, as security of Thomas F. Herbert, more than $3,000 since that time.

"From this state of facts it is to be determined whether there was a delivery of the deed to John C. Herbert.

"It is most manifest that there could have been no delivery of the deed to the grantee, so as to pass the estate. The act of recording a deed cannot amount to a delivery when there does not appear an assent or knowledge by the grantee, of the act. In this case there is not a scin-

tilla of evidence calculated to lead the mind to the belief that the grantee ever knew of the existence of the deed until after the death of the grantor. There could then have been no acceptance by the grantee because the possession of the deed, if such had been the fact, derived after the death of the grantor, could not amount to one, there having been no delivery during the life of the grantor. That it is essential to the validity of a well executed deed, that there should be a delivery, will not be controverted. This delivery is said to be 'either actual, by doing something and saying nothing, or else verbal, by saying something and doing nothing,' or it may be both; but by one or both of these it must be made, for otherwise, though it be never so well sealed and written, yet is the deed of no force."

Again, "It is also held to be essential to the legal operation of the deed that the grantee assents to receive, and that there can be no delivery without acceptance. Indeed, a delivery of a deed, which is essential to its existance and operation, necessarily imports that there should be a recipient. Now in this case it would be idle to contend that there was a delivery and reception, when the grantor died before the grantee knew of the existence of the deed; he could not then receive that, of the existence of which he had no knoweldge, nor could there have been a delivery to him without such acceptance."

In the case of Wiggins vs. Lusk, 12 Ill. (2 Pick.) Rep., 132, is even still stronger, if possible. The plaintiff had introduced in evidence a deed from Smith to McDowell, dated 27th of April, 1833, and recorded 26th of October, 1836, to rebut which the defendant produced evidence that Smith died intestate in the year 1834, and that when the deed to McDowell was acknowledged, Smith stated to the justice that he owed McDowell, who was his brother-in-law, and wished to secure him; that he wanted the matter kept secret, for he feared some claims would follow him from Indiana, and he wished to place the

property out of the reach of those having claims; that McDowell, who resided in Indiana, or the eastern part of the state, was not present, and the deed was returned to Smith; that after Smith's death his widow intermarried with John Ayers, who found the deed to McDowell among the papers of Smith, at his decease, in the possession of the widow, and placed the same upon record and received it from the recorder.

In commenting upon these facts the court say: "If the deed from Smith to McDowell was ever delivered so as to vest the legal estate in the latter, and that estate was not defeated by the failure to record the deed before the suit. * * * In our opinion, however, there was no valid delivery of the deed to McDowell. To render a deed operative to pass title there must be something more than the mere signing, sealing, and acknowledging. A delivery of the deed by the grantor, and an acceptance thereof by the grantee, are essential to its validity. The grantor must deliver the deed to the grantee, or some one acting on his behalf. It must be accepted by the grantee, or by some one for him. It may be delivered to a stranger for the use of the grantee, and the acceptance by the latter will be presumed, where he claims under it. But the grantor must part with all control over the deed. It cannot take effect while it remains in the possession, and its subject to his control. In this case McDowell claimed title under the deed and it was in the possession of his grantor. This raised the presumption of a delivery to, and acceptance by him. And the presumption could not be overcome, except by clear proof that there had been no actual delivery of the deed by the grantor. The evidence introduced showed that the deed, after being acknowledged, was retained by the grantor, and was found among his papers after his decease. The grantee was not present when the deed was executed, and it is very evident that he was not aware of its existence until after the death of the grantor. It is an irresistible inference from

this proof that the grantor never parted with the control over the deed; in other words, it effectually rebuts any presumption arising from the other facts of the case that the deed was ever delivered to the grantee, or to any one for his use. It was, no doubt, at one time, the intention of the grantor to convey the land to McDowell, but he died without carrying the intention into effect. His design was but in part executed; it was never consummated so as to give the deed any legal operation. It could not take effect while it remained subject to the control of the grantor. It went into operation while he was in life, if at all. If there was no delivery by the grantor the deed could not become operative by a delivery after his death. It was mere waste paper, and it was not in the power of Ayers to give it validity, by placing it on record or delivering it to the grantee."

So likewise, in Maynard vs. Maynard, 10 Mass., 456, it is said: "A signs and seals a deed conveying land to his son, and leaves it with the scrivener with directions to get it recorded, which was done, and the deed, at the grantor's request, still remained in the scrivener's hands until the death of the son, when the father reclaimed and canceled it, the son having known nothing of the transaction. It was holden that the father was still entitled to the land as against the heirs of the son, the conveyance never having been perfected by a delivery of the deed."

The following cases are also to the point that there must be a delivery, and that this cannot be without the knowledge and acceptance of the grantee or some one for him, expressed or implied, under circumstance justifying and admitting such implication, and that acknowledgment and registration is not tantamount to, or a waiver of a delivery.—Rosevelt vs. Crow, 6 Barb. Sup. Ct. R., 19; Cecil vs. Butcher, Jac. & Walk., 573; Stilwell vs. Hubbard, 20 Wend., 44; Jackson vs. Lusk, 12 Wend., 107; Jackson vs. Phipps, 12 John., 418; Barlow vs. Hunter, 1 Marsh., 97; Bryan vs. Wash, 2 Gill., (Ill.,) 564; Wheel-

right vs. Wheelright, 2 Mass., 247; Curch vs. Gilman, 15 Wend., 656; Barns vs. Hatch, 3 N. H., 304; Draton vs. Perry, 5 Vt., 388; Elsey vs. Metcalf, 1 Denio, 326. And, says C. J. Shaw—"Undoubtedly registration, even by the grantor, will not operate as a delivery, nor supersede the necessity of proof of delivery"—Daggett vs. Slack, 8 Metc., 450.

The most favorable view that can be taken of the testimony would be to say that Nixon's acknowledgment of delivery before the officer, made for the purpose of its registry, his statement in conversation with Johnson that he had made a deed, and the plaintiff's that her father had conveyed, might justify the presumption of delivery. But as they are consistent and reconcilable with the direct testimony which the defendants have furnished, that there was no delivery, they will surely not be permitted, on mere presumption and inference, to set aside and contradict this direct testimony brought by them into the case.

The plaintiff's declaration that her father had "conveyed" some real estate is not stronger than Nixon's, that he had "made a deed to some property," and this occuring in a loose conversation, is surely of no more weight than his more formal declaration before the notary that he had signed, sealed, and delivered the deed. Yet we have seen that this will not supply the want of delivery, or prove the fact of delivery when possession of the deed has not been parted with by the grantor, and there has been no consent or acceptance by the grantee during the the grantor's life. "An admission," it is said, "in an undelivered instrument is not evidence. Such admissions are merely hypothetical, or in anticipation, and they are like undelivered deeds or unuttered thoughts." 2 Dick's Law of Ev., sec. 1,448; also 2 Washb., Real Propt., 578, sec., 24, 30.

It is an elementary principle that "any great weight ought not to be attached to evidence of what a party has been supposed to have said, as it frequently happens, not

only that the witness has misunderstood what the party said, but that by unintentionally altering a few of the expressions really used, he gives an effect to the statement completely at variance with what the party actually did say."—1 Greenl. Ev., secs. 96, 200; 2 Dick's Ev., sec. 1,491.

Nor should we justly import from the alleged declarations of the plaintiff or her father, that they were speaking with reference to the delivery of the deed, or that this comes fairly within the scope of what the witnesses themselves mean to say, who speak, I beg leave to say, in an ex parte affidavit, manipulated, as is usually the case, I suppose, with such testimony, by the friend or agent of the party at whose instance it is taken. It is surely a matter of familiar observation, that a distinction is usually made in ordinary parlance between the making or executing a deed and its delivery. Indeed we often find it made by accurate and emminent lawyers.—1 Dick's Law of Ev., 483. And Judge Washburn, says: "Nor will the *making* and *executing* a deed in all respects, even to registering the same, be of any validity, unless delivered; though, if the recording of the deed is intended as a delivery, and is known to the grantee, and he assents to the same, it will take effect from the time he so assents."—2 Washb., Real Prop., 581, sec. 30.

When a deed is intended to pass a present interest, and divest the title immediately and absolutely for the benefit of creditors, a delivery seems more readily presumed.—2 Washb. Real Propt., 582, sec. 39, 40.

And it is also said, "the law presumes much more in favor of the delivery of deeds in case of voluntary settlements, especially when made to infants, than it does in ordinary cases of bargain and sale. The same degree of formality is never required, on account of the great degree of confidence which the parties are presumed to have in each other, and the inability of the grantee, frequently, to take care of his own instrument."—Bryan vs. Wash,

2 Gilm., (Ill.,) 568. The present is not one of these classes of cases. The rules and analogies drawn from them are inapplicable to it.

The theory of the defendants, resting alone upon the vague suggestion of Duffield, brought to the court as hearsay testimony in the second degree, is, that the deed was intended by Nixon for the purpose of defrauding creditors. If this was his purpose the court will not, from the mere preliminary steps, indulge the presumption of the consummation of the fraudulent intent, much less will it disregard the positive proof that it was not carried into final execution.—Wiggins vs. Lusk, 12 Ill., (2 Pick.,) 132.

If Shelby acquired no title under the deed, of course the defendants have none. Now, I submit in all confidence, if this had been a suit brought by Shelby against Nixon for possession of the deed or a recovery of the property, and it was before the court on precisely the evidence which has been adduced in this case by the defendants, whether it would for a moment be contended that there was either proof of delivery of the deed, or that such a presumption could with propriety be deduced from the proof? If not, then with equal confidence I submit whether the charge given to the jury, to which objection is taken in this bill of exceptions, if correct as an abstract question of law, was proper to have been given to the jury? Was it not calculated to mislead and divert them from the real matter in issue in the case? The charge given at the instance of the defendants was improper, not only for the same reason, but was bad *per se*, because by it the jury were told "If he (Nixon) made the deed, as between Nixon and Shelby, or Shelby's vendees, the deed was binding whether it was actually delivered to Shelby or not. If it was Nixon's deed, and Shelby acted under it, the plaintiff is bound by these acts." The whole theory of the defence rested upon the hypothesis that if the deed was made or signed by Nixon, although it never passed out of his

possession, and was unknown to Shelby until after his death, as it appeared on its face to convey a good title, and the defendants had purchased under it in good faith, their title could not be questioned by the plaintiff. This charge, given at the instance of the defendants, authorized and, doubtless, induced the jury to conclude that this was the law of the case. And no other conclusion can be justly drawn from the ambiguous language of this instruction, especially when we consider that the question of delivery was the turning point in the case; yet, the charge of the plaintiff distinctly setting this before the jury as a necessary element in the defence, was refused. Why give the one and withhold from them the other? That asked by the plaintiff was simple, clear, and explicit, and embraced the very points in issue and nothing else; the other was vague, indefinite, and argumentative. Correct or erroneous, as conclusions should be drawn from doubtful and uncertain words and phrases, not always, as we have already seen, used even by lawers in the same sense.

The charge given by the court, of its own motion, and that given at the instance of the defendants, in respect to the effect of the plaintiff's affidavit of forgery, are clearly erroneous. It is not insisted for the plaintiff that the affidavit furnished any evidence of the forgery of the deed, and no instruction asked for her gives countenance to such a supposition. But it was and is insisted, if the defendants were attempting to make their defence under the common law, the burden of proof was upon the defendants to establish the existence of the deed set up by them. It was not for the plaintiff to prove it a forgery. If they were seeking to rely upon the presumption of the validity of the deed as a recorded instrument under the statute of Texas, then the plaintiff insists that the affidavit precluded them from this presumption and threw them back under the common law rule. With due difference I submit that his honor, in this particular, misconceived the law of the case; and in these two charges, as well as

that given at the instance of the defendants, excepted to in the second bill, improperly devolved the burden of the issue as to the validity of the deed upon the plaintiff. This question is so intimately connected with the matter of the ninth bill of exceptions that I will suspend any further remark upon it for the present, asking the court to give what may be said when I come to treat of the matter contained in that exception such consideration as its pertinency may give it to this.

The fourth bill of exceptions was probably taken through an oversight of the change in the statute law of Texas. The twelfth assignment of error found upon it need not, therefore, be considered.

The thirteenth assignment of error is made to the refusal of the court to instruct the jury as to the proper weight and consideration to be attached to testimony brought into court by *de bene esse depositions*. This is a question of but little importance in this court. But as it is an elementary principle that a cross-examination is an essential element for eliciting truth, I can perceive no good reason, in view of the nature of the evidence adduced, the circumstances under which this means of obtaining it was resorted to, why the court should have declined giving a charge instructing the jury as to the nature and characteristics of such testimony embodied in the precise language of an opinion of this court.—Walsh vs. Rogers, 13 How., (U. S.,) 283.

The fourteenth assignment of error grows out of the matter in the sixth bill of exceptions.

The common law rule as to the necessity of proof of the execution of instruments which may be recorded, when offered in evidence, has been to some extent modified by statute in Texas. The change in the rule will be seen by the following section of the statute.

"Every instrument of writing which is permitted or required by law to be recorded in the office of the clerk of the county court, and which has been, or may be so

recorded after being proven or acknowledged in the manner provided for by the laws in force at the time of its registration, shall be admitted as evidence, without the necessity of proving its execution; provided, the party who wishes to give the same in evidence shall file the same among the papers of the suit in which he proposes to use it, at least three days before the commencement of the trial of such suit, and give notice of such filing to the opposite party, or his attorney, of record; and unless such opposite party, or some other person for him, shall, within one day after such notice, file an affidavit that he believes such instrument of writing to be forged. And whenever any party to a suit shall file among the papers of the suit an affidavit, stating that any instrument of writing, recorded as aforesaid, has been lost, or that he cannot procure the original, a certified copy of the record of any such instrument shall be admitted in like manner as the original could be."—O. & W. Dig., (Laws of Texas,) Art. 469.

It is, of course, optionary with a party whether he will avail himself of the privilege of the statute, or proceed with his case under the common law rule. The plaintiff did not know but what the defendants might produce the deed upon the trial, and attempt proof of its due execution, until they had offered their predicate for secondary evidence. After going to trial, without filing the deed or copy, and giving the plaintiff three days' notice, they knew, in strictness, the defendants were not entitled to avail themselves of the statute. But the supreme court of Texas had intimated (Crayton vs. Munger, 11 Tex., 237,) that the time of notice might probably be dispensed with, if no injury would result from so doing. The plaintiff supposed the court might hold it a matter of no moment in this case, as it was, in fact, of none, because they were prepared with the affidavit as to plaintiff's belief of the forgery of the deed, and therefore made no question as to notice, but filed the affidavit as soon as the court

had decided that there was a *prima facie* case that the defendants were not in possession of the deed, and as soon as there was any intimation whatever that the defendants wished, or would attempt to avail themselves of the benefit of the statute.

Comment was made, and may be again, upon the fact that the affidavit was prepared, and had laid in the hands of counsel without being filed, for some two years. This is true; but an inspection of the statute shows the reason. By it, unless the opposite party makes oath that he believes the instrument forged, within one day after notice of the filing of the deed or copy, as the case may be, he seems to be precluded, and the instrument goes in evidence without further proof. The plaintiff was a non-resident of the state—notice might have been given to her attorneys in her absence. They deemed it more appropriate that she should make her own affidavits. Therefore, as soon as she became satisfied, after due enquiry, that the facts of the case fully authorized her in doing so, she made the affidavit as required by the law. But it was not filed, as I have said, because the plaintiff's counsel could not know that the line of defendants' defence would make it necessary, and because they were not called upon to do so until the deed or copy had been filed and notice given, &c.

The first objection goes to the sufficiency of the predicate for the admission of secondary evidence, which I have already considered, and that the affidavit and copy of the deed were not filed and notice given as required by the statute. This, of course, is conclusive against the copy as coming within the rule of the statute, unless upon the authority of the case to which I have referred; and in view of the fact that the plaintiff was prepared to file the affidavit immediately, which it was intended to reserve her the right of making by the notice, the court can dispense with this requirement of the law. This I submit without comment. But I maintain, indisputably,

that the affidavit having been made in due time by the plaintiff, the defendants could not avail themselves of the deed, or a copy of it, as *prima facie* evidence upon the presumption of its genuineness, arising from its registry or acknowledgment before the notary public for registry. To hold otherwise, absolutely nullifies the statute. This is all that could be done if an affidavit of forgery was not filed. Being filed, however, the party claiming under the deed is debarred from any presumption of the genuineness of the deed and its certificate of authentication, whether the original or registry copy is produced. But the doctrine laid down by the court, as well in this ruling as in the charges to which I have already called attention, is directly the reverse of this. According to this doctrine, the affidavit of forgery did not devolve upon the defendants the necessity of establishing the due execution and delivery of the deed by independent and extraneous evidence. The certificate of acknowledgment and record of the deed was *prima facie* evidence of this, and the affidavit merely allowed the plaintiff to attack its genuineness. This construction, it seems to me, is contrary to the letter and the spirit of the law. It has, I am sure, never been so construed in the courts of the state. I find it to have been referred to in the following cases; but in none of them does this interpretation of it seem to have been thought of: Crayton vs. Munger, 11 Tex. R., 234; Butler vs. Dunnagan, 19 Tex., 556; Styles vs. Gray, 10 ib., 503; Peck vs. Clark, 18 ib., 239; White vs. Holliday, 20 ib., 681–2; McDuffie vs. Greenway, 24 ib., 625.

The second exception in this bill is to the admissibility of the copy of the certificate of the officer before whom it was acknowledged for record. If the original certificate itself had been in court, the deed having been attacked, it would not have been admissible as evidence of its genuineness. As said before, this is the most that could be said for it, if the affidavit of forgery had not been made.

The acknowledgment of a deed may be for the purpose of passing title, as is the case in the privy examination and acknowledgment of a married woman, or merely to entitle the deed to be registered, as is the case in ordinary acknowledgments of a grantor. In the latter case, while the acknowledgment is effectual for the purpose for which it was authorized, it is no evidence whatever of the passage of title, and therefore does not entitle the deed to be read in evidence without the usual proof. The legislature of Texas, as we have seen, as has been done in most of the other states, have, however, provided, for the sake of convenience, that deeds duly acknowleged and recorded may, upon certain prescribed limitations and conditions, be received as *prima facie* evidence without further proof. But it is only under the circumstances, and upon the conditions laid down in the statute, that this can be done; and in all other cases full proof is required, as at common law, when such deeds are offered in evidence. The restriction however would be idle if the certificate upon which the deed was admitted to record furnished the necessary proof.

The certificate was ex parte, and only binding for the purposes and on the parties as to whom it is made effectual by the statute. The law only authorizes acknowledgment of deeds to be taken by notaries for their registration.—O. & W. Dig., art. 1,497. Their certificates were not intended to make proof in actions between parties.

If the certificate of the notary is evidence, no statute makes the county clerk's copy of a copy of it such. The notary is required to keep a registry of his official acts and to give certified copies thereof.—Hart. Dig., art. 258; O. & W. Dig., arts. 1,500, 1,504. And copies by his successor in office are of the same effect as if given by the notary by whom they were made.—O. & W. Dig., 1,505.

The original charge of the court, and that given at the instance of the defendants, makes the certificate of acknowledgment *prima facie* evidence of the due execution

of the deed. This presents substantially the same question as the other charges upon which we have commented which gave this effect to the recording of the deed, except that the former were based upon the whole, these upon a part. If the former are wrong these cannot be right.

The fifteenth assignment of error is upon the seventh bill of exception, as to the refusal of the testimony to impeach the character of the notary, Legrant. Upon this I have only to say, if the important and grave presumptions flow from his certificate which the charge of the court imports, his character should be above reproach, in fact it seems beneath contempt.

The sixteenth assignment goes to the eighth bill, which embraces the two certificates of the comptroller. To the first I urge that it certifies to a negative conclusion on facts not set forth, it is therefore judicial in its character and not ministerial or within the functions of the officer by whom it is made. He should have given the facts, and let the court have drawn the deductions. It only applies to three counties. The plaintiff might under the law have listed the property for taxes in any county in the state where it chanced to be most convenient to herself or agent. The record discloses the fact of her residence in the state of Mississippi at least since 1854. The reasonable presumption is, that she would have selected Galveston as the nearest and most accessible point in the state to her residence at which she could transact her business.

The second certificate is fatally defective, because it does not appear from it that any taxes have at any time been paid by the defendants upon the lot involved in this suit.

During the trial the defendants took a bill of exception to the ruling of the court as to amount to be charged against them, if a verdict were returned for the plaintiff, for the use and occupation of the property. But as the result of the case superseded this inquiry, I infer that the

court will take no notice of the question in its present attitude. I therefore pass it by with the observation that the ruling of the court was as favorable for the defendants as any of the adjudicated cases in the state court upon this subject authorized.

I have been advised by the counsel for the defendants that he would insist that none of the questions presented by the assignments of error, and especially none in respect to the giving and refusal of the several charges given and refused, should be considered by the court, because it does not appear from any of the bills of exceptions that all of the facts which were in evidence in the court below have been brought up in the record to this court. As I understand the rule of practice here, this is unnecessary; in fact, it would be improper to carry into the bills of exception other evidence than such as is necessary for the proper understanding of the question presented and acted upon by the court below.

Zellu vs. Echart, 4 How (U. S.), 297–8.

REVERDY JOHNSON,

Attorney for Plaintiff.